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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 630 (ER)

5 MARK S. SCOTT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 15, 2019
9:00 a.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,

United States Attorney for the
Southern District of New York

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20 BY: ARLO DEVLIN-BROWN

KATRI STANLEY

21 -AND-

22 DAVID M. GARVIN

JBF3SCO1

(In open court; jury not present)

THE COURT: Good morning, folks. I received the midnight message from Mr. Devlin-Brown. Are folks prepared to discuss it?

MR. FOLLY: Your Honor, we are prepared to discuss it. I would just note, I think the microphones at our table aren't on.

THE COURT: Just speak up.

MR. FOLLY: We're happy to. Since it's Mr. Devlin-Brown's motion, I'll let them start things off.

THE COURT: Mr. Devlin-Brown.

MR. DEVLIN-BROWN: Good morning, your Honor. So, as you can see from our letter, we're seeking the movement into evidence of government -- Defense Exhibits 550 and 552. I think 550 really, and we can do whatever redactions the government wants, I think there is no question that that statement is within the 803(3) hearsay exception of Best, United States v. Best. "I'll be traveling all this week." And I think it's important.

Mr. Konstantin, it wasn't sort of told that way through his 3500 material. But by the time of trial, there was a dramatic story. The meeting itself is not that interesting. Mr. Scott met with Ms. Ignatova. But the fact that Mr. Konstantin says that the person that he understood to be the one involved in money laundering with Mark Scott joined the

JBF3SC01

1 meeting midway through, causing Ruja to come out and clear the
2 office for the first time ever, and then leading to a
3 subsequent conversation where Ms. Dilkinska tells Konstantin
4 that they had to stay a long time to make sure Mr. Scott
5 understood everything. I mean, that's compelling evidence for
6 the government. Particularly as it's the sole encounter that
7 Mr. Konstantin can testify to.

8 So I think that e-mail as well as 552 raise very
9 substantial questions as to whether Irina Dilkinska attended
10 the meeting.

11 We've asked the government if they have anything
12 further, we found these documents, we've asked if they have
13 anything further in their files that would reflect where Irina
14 Dilkinska was. They've said not that they have been able to
15 identify.

16 We think that's proper for the jury to have this
17 substantial impeachment that goes both to Mr. Konstantin's
18 credibility broadly, and also to whether this meeting in fact
19 happened.

20 MR. FOLLY: Your Honor, as to the first statement,
21 your Honor ruled on this first statement while the witness was
22 on the witness stand, and that ruling was correct. Looking at
23 the primary case that the defendant is relying on, this United
24 States v. Best case, and if your Honor wants I have an extra
25 copy. Would your Honor --

JBF3SC01

1 THE COURT: Sure.

2 MR. FOLLY: Okay. Your Honor, the Best case, the
3 ruling there was not nearly as broad sweeping as defense
4 counsel has stated that it was. And focusing on the actual
5 analysis in that opinion, which starts on page six, the court
6 says in prior cases they've discussed whether a declarant's
7 out-of-court statement of intent was admissible in evidence
8 against a person other than the declarant, which here that's
9 precisely the posture we're in. It's not Mr. Ignatov's
10 statement; it is a statement of Irina Dilkinska.

11 And the court says in each of these cases we concluded
12 that admissibility turned on whether there was independent
13 evidence that connected the declarant's statements with the
14 non-declarant's activities.

15 In other words, whether there was independent
16 corroborating evidence that the statement, the out-of-court
17 statement that was made as to future intent was in fact true
18 and happened. And what the court explains in these other cases
19 that it relies on in Best is that there needs to be some
20 independent evidence. And the type of evidence they cite are,
21 for example, law enforcement surveillance observing the event
22 that happens that the out-of-court statement of future intent
23 is referring to. So someone saying I'm going to have a meeting
24 with so-and-so, and then law enforcement agents actually
25 surveil that meeting, and you put those two things together.

JBF3SC01

1 The holding in Best suggests that, yeah, that might be a
2 situation where such a statement would be admissible.

3 And then if you look further down, on page seven, the
4 first full paragraph there, in the case that they distinguish
5 where they found that such a statement is not admissible, they
6 say we held that the informant's statement was not admissible
7 to prove that was Delvecchio attended the meeting, because
8 there was no independent evidence that he had done so.

9 So, your Honor, this case actually illustrates the
10 exact concern we have, which is relying on an out-of-court
11 hearsay statement, for its truth, without any sort of
12 independent corroborating evidence such as law enforcement
13 surveillance about Ms. Dilkinska being out of the country,
14 traveling in some other location.

15 So, this seems clearly under the law and under the law
16 that the defendant cites in their own brief, this seems clearly
17 inadmissible. Your Honor's ruling on this e-mail that you made
18 last week while this witness was on the stand should stand.

19 As to the second e-mail, that one is even more
20 problematic. And that e-mail the defense is actually relying
21 on the seldom used residual exception to hearsay, to try to get
22 that e-mail into evidence. And your Honor, the problem with
23 that e-mail is in that e-mail, there is reference on July 20 to
24 Mr. Scott's travel, in that same e-mail chain, and there is
25 reference on July 20 to Irina Dilkinska referencing travel.

JBF3SC01

1 The fact that Irina Dilkinska references travel does
2 not establish that she could not have been in Sofia for the
3 meeting. Mr. Scott references his own travel, in that meeting,
4 I mean in that e-mail, and obviously, no one is disputing that
5 he himself ended up in Sofia, Bulgaria, and attended a meeting.
6 So, the very e-mail illustrates that referencing travel on the
7 same date of the meeting does not mean that one did not in fact
8 attend a meeting.

9 So, for those reasons, both of these statements are
10 clearly inadmissible hearsay, and should not come into evidence
11 at this trial.

12 MR. DEVLIN-BROWN: You know, I just want to step back
13 for a second. Because perhaps the government has other
14 evidence we're not aware of. But, I think just stepping back,
15 this raises a very substantial question as to whether
16 Mr. Ignatov was correct about a key detail and whether that was
17 false testimony willfully or just an incorrect memory, but
18 conveniently a very incorrect memory for Mr. Scott. It's very
19 problematic. And I haven't heard the government say, oh, no,
20 there is some independence evidence Ms. Dilkinska was there.

21 The first e-mail, which of course there is no
22 incentive for anyone to be fabricating some alibi in case
23 Ruja's brother testifies years later. She lives in Sofia, she
24 says I'm traveling all next week. The meeting is a couple of
25 days later.

JBF3SC01

1 I don't care about 552 as much, your Honor. Partly
2 why I presented that to the Court is it sure seems consistent
3 that they are in fact traveling. There is e-mails after that
4 date, which we could provide if it was going to be helpful,
5 because the e-mail context was they're trying to get a
6 signature on a contract or on some document for banks. There
7 is e-mails after that date, where they're still sort of back
8 and forth about finalizing. That wouldn't really make sense
9 if, oh, we actually just bumped into each other in Sofia and
10 took care of this.

11 So I think 551, just to go to the evidentiary question
12 in Best. This is a doctrine that apparently goes back to a
13 Supreme Court case in the late 18 -- no, 19th century, and it
14 is still cited in the federal rules of evidence. A statement
15 of intent is admissible, I mean a statement of plan is
16 admissible as to what someone's plans are and that can be
17 part -- that can be some evidence that the plan likely took
18 place.

19 The suggestion that the government has raised that,
20 you know, the only way we could possibly get that in is if we
21 had law enforcement surveillance, or the equivalent, to prove a
22 negative, by the way, because this is different than cases
23 where you are trying to confirm the declarant's testimony. We
24 are not trying to confirm the declarant's testimony. We are
25 trying to impeach the declarant's testimony. So no, we don't

JBF3SC01

1 have access to law enforcement surveillance in Sofia showing
2 she didn't attend the meeting.

3 THE COURT: It doesn't need to be law enforcement
4 surveillance. It can be any other kind of independent
5 evidence, including circumstantial evidence.

6 MR. DEVLIN-BROWN: I think these e-mails are
7 circumstantial evidence. The government has gotten a vast
8 trove of e-mails from not just Mr. Scott, but from the search
9 warrants in Bulgaria, from search warrants in Germany, from all
10 sorts of other sorts of cooperating witnesses.

11 We have I think a lot of it, probably not all of it
12 because it's not all relevant to Mr. Scott, even if it has been
13 offered to be made available. When we search the records for
14 that week, it strongly suggests Irina Dilkinska is not there.
15 Just as she said pretty clearly in that e-mail.

16 So, look, if the first e-mail is in, the government
17 can still argue, you know, maybe that plan didn't take place,
18 or Konstantin had a good-faith memory that it was wrong, but,
19 we should be permitted to argue that he was mistaken about this
20 meeting.

21 THE COURT: Well, the text of 803(3) would appear to
22 clearly establish the admissibility of 550. I don't think 552
23 comes in at all because of the way that the e-mail is phrased
24 because it's not a statement of intent. But 803(3) says that
25 the following statement would not be excluded under the rule

JBF3SC01

1 against hearsay. Then existing mental emotional or physical
2 condition, a statement of the declarant's then-existing state
3 of mind such as intent or plan.

4 However, the case law, as Mr. Folly indicates,
5 requires more. And in the case that was cited by the defense,
6 where such statements were admitted, the court concluded that
7 admissibility turned on whether there was independent evidence
8 that connected the declarant's statement with the
9 non-declarant's activities. Here there is not that independent
10 evidence. Accordingly, the ruling will stand.

11 Anything else? The microphone is on now?

12 MR. FOLLY: Your Honor, I think they're working. Yes.
13 Just one issue I want to flag, I don't think it really requires
14 any ruling or anything. But the parties have been discussing
15 the exhibits that were referenced on the timeline. And we want
16 to make sure that there is a clear record of what was admitted
17 into evidence. Yesterday certain exhibits, as we mentioned,
18 were not published to the jury. In fact, probably about half
19 of the exhibits referenced on the timeline were not.

20 I think at this stage to give defense counsel an
21 appropriate amount of time, we would prefer to wait until
22 Monday so they can thoroughly check the list and make sure that
23 there are in fact no objections to exhibits that have not yet
24 been published to the jury. And then on Monday we just ask
25 that we formally provide those to the court reporter so that

JBF3SC01

1 they can be part of the record.

2 THE COURT: Okay.

3 MR. DEVLIN-BROWN: That certainly sounds good to us,
4 so we appreciate that.

5 MR. DiMASE: There is one other issue, your Honor, but
6 could I have just one moment to discuss it with my colleagues?

7 THE COURT: Okay.

8 MR. DiMASE: Your Honor, apologies. One other issue
9 we wanted to raise. This is something we disclosed to the
10 defense last night. After the testimony of Mr. Kishore from
11 Iberia Bank, formerly Sabadell Bank, we took a letter which was
12 attached to Government Exhibit I believe it was 4101.

13 One moment so I can make sure that is the correct
14 exhibit number.

15 MR. DEVLIN-BROWN: That's correct.

16 MR. DiMASE: Okay. So Government Exhibit 4101, which
17 was an e-mail sent by somebody who worked for Zala Group to
18 Mr. Scott attaching a letter from Sabadell Bank dated August 17
19 of 2016. The witness testified that he wasn't certain that he
20 had written that letter. I don't know if the Court recalls
21 that.

22 But, after the testimony, we decided to reach out to
23 the Iberia Bank to ask them to do a search of their records to
24 determine whether or not that letter was in the files of Iberia
25 Bank. And what we have learned, actually yesterday, was that

JBF3SC01

1 they cannot find a copy of that particular letter within the
2 files at Iberia Bank. That's really all they're able to say.
3 But they are also able to say that three of the entities listed
4 on that letter that was attached to Exhibit 4101 never held
5 bank accounts at Sabadell United Bank to the best of their
6 knowledge.

7 So, we've disclosed this information to the defense.
8 The e-mail and the attached letter were located on an e-mail or
9 within an e-mail account that was obtained pursuant to a search
10 warrant. That e-mail account belonged to Mr. Scott. So it was
11 an e-mail sent by an employee of Zala to Mr. Scott's e-mail
12 account. The e-mail itself is authentic and was sent to the
13 defendant. That's the point.

14 And so, we just wanted to raise that with the Court to
15 let the Court know. Obviously, the defense is free to proceed.

16 THE COURT: Remind me the substance of that letter.

17 MR. DiMASE: Yes, your Honor. As you may recall,
18 there was a letter which was authenticated by the witness as a
19 true and accurate letter from Sabadell Bank to Mr. Armenta
20 stating that the accounts of Zala Group and Fates Group were
21 going to be closed, and giving them a 30-day period to I guess
22 figure out their affairs before the accounts were shut down.

23 There was a subsequent e-mail from an employee of Zala
24 Group to Mr. Scott on or about August 17 attaching what appears
25 to be a second letter from Sabadell Bank dated August 17 of

JBF3SC01

1 2016, which indicated that all accounts of the following
2 entities were being closed. Zala and Fates Group, which was in
3 fact accurate, those were being closed. And then the accounts
4 of three other entities which were apparently not holders of
5 bank accounts at Sabadell Bank.

6 THE COURT: Because I can be dense, what's the
7 gravamen of that? Why would, if the government's theory or the
8 the assumption is it was fabricated, why would that have been
9 fabricated?

10 MR. DiMASE: That is unclear. We can -- and I am a
11 not sure it is relevant particularly to this trial either. In
12 terms of why, whoever --

13 THE COURT: Is it helpful to Zala Group and Fates?

14 MR. DiMASE: Your Honor, first of all, I stand
15 corrected. The exhibit number is 4108. Not 4101, so that
16 should be reflected. One moment, your Honor.

17 THE COURT: You don't have to speculate, by the way.
18 Just curious.

19 MR. DiMASE: I think that's the concern is speculating
20 about it. Mr. Armenta and his employees, none of them are
21 anticipated to testify at this trial. So, we've disclosed the
22 information, the defense can use it how they see fit. We just
23 wanted to let the Court know.

24 THE COURT: Okay.

25 MR. DEVLIN-BROWN: So, we obviously appreciate the

JBF3SC01

1 disclosure, and I don't know if you're set up yet, Mr. Barile,
2 but it might be helpful to put it on the screen.

3 I don't know if we can get that on the screen or not.
4 But I think the significance is actually pretty important for
5 the defense. And here's why, your Honor. Much of the
6 government's case with respect to Gilbert Armenta is premised
7 on Gilbert Armenta, what the government would probably say is
8 circumstantial evidence of Gilbert Armenta keeping Mr. Scott in
9 the loop about various fraudulent or money laundering plans,
10 and part of their evidence to that, which they pushed to get in
11 actually over the defense objection, is Mr. Armenta's sending
12 Mr. Scott various pieces of information. And you remember the
13 defense would sometimes put in information like, look, here is
14 a response that suggests they're not really getting along all
15 that well.

16 But this is very significant. Because, the original
17 letter to -- from the bank to Gilbert Armenta mentions the two
18 businesses, Fates and Zala, who actually had accounts closed
19 who had done work with Mr. Scott before. And it appears at
20 minimum, that Gilbert Armenta or someone he was working with
21 altered the letter, added three other companies, they actually
22 altered the text at the bottom of the letter as well, and sent
23 that to Mr. Scott.

24 So, I don't know exactly what to make of that yet
25 either. But, there is certainly significance to the fact that

JBF3SC01

1 it's not real. And that Gilbert Armenta, alleged to be a
2 cooperating witness, I mean a co-conspirator with Mr. Scott,
3 sent him actually false information about that account.

4 In terms of what the defense would seek at this point,
5 again, because I think it's hard to know what to make of it.
6 But we're a day or two from the trial ending. I would hope
7 that the government would be willing to stipulate to those
8 facts in terms of the contact with Sabadell Bank and they don't
9 have records of this letter or these accounts. And then I
10 think we can go from there. But I think having that would be
11 important.

12 MR. DiMASE: We'll discuss appropriate stipulations
13 with the defense. And obviously, the defendant is free to
14 attempt to call some witness from one of Mr. Armenta's
15 companies to testify if he would like. But I don't think the
16 government is going to be able to stipulate to any facts beyond
17 what Sabadell Bank would say.

18 THE COURT: Sure.

19 MR. DiMASE: But we'll address that with
20 Mr. Devlin-Brown.

21 THE COURT: Okay. We have four minutes. Anything
22 else? And we still have Agent Kroll, correct, on the stand?

23 MR. FOLLY: That's correct, your Honor. I believe
24 someone is coming over to fix an issue with the monitors. The
25 feed doesn't seem to be working.

JBF3SC01

1 MS. STANLEY: Nor on this side.

2 MR. FOLLY: It is not the computer today.

3 THE COURT: Your monitors?

4 MR. FOLLY: I don't think any of them are working as
5 far as publishing exhibits right now.

6 THE COURT: Someone is coming when?

7 MR. FOLLY: Ms. Rivera indicated someone was coming
8 over.

9 (Recess)

10 THE COURT: Okay. Can we get Mr. Kroll.

11 MR. DiMASE: Yes.

12 THE COURT: The government has more witnesses,
13 correct?

14 MR. FOLLY: Yes, your Honor.

15 (Continued on next page)

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JBF3SC01

Kroll - Cross

1 (Jury present)

2 THE COURT: Good morning, everyone. Please be seated.

3 Ladies and gentlemen, good morning. I trust you all
4 had a pleasant evening, and some of you will be happy to know
5 we've finally gotten it to a temperature that makes me
6 uncomfortably warm, but these are the sacrifices that I make
7 for you.

8 We can now continue with the cross-examination of
9 Agent Kroll.

10 Agent Kroll, you are reminded that you are still under
11 oath.

12 THE WITNESS: I understand.

13 MR. GARVIN: Good morning, counsel. Good morning,
14 your Honor.

15 THE COURT: Good morning.

16 MR. GARVIN: Good morning ladies and gentlemen.

17 NICHOLAS KROLL,

18 called as a witness by the Government,

19 having been previously sworn, testified as follows:

20 CROSS-EXAMINATION

21 BY MR. GARVIN:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. I'd like to pick up if we could by talking about
25 Government's Exhibit 1004.

JBF3SC01

Kroll - Cross

1 If Mr. Barile would be kind enough to pull it up.

2 This is one of the documents that's in the timeline
3 that is Government's Exhibit 2701, correct?

4 A. Yes.

5 Q. And it is one of the documents that actually starts the
6 timeline, correct?

7 A. I believe so, yes.

8 Q. If you would be kind enough to enlarge the top portion,
9 sir. We see that this is from Gilbert Armenta, correct?

10 A. Correct.

11 Q. And it's dated September 30, 2015, to MarkScott@LockeLord
12 and Ruja Ignatova at a OneCoin e-mail address. Correct?

13 A. Correct.

14 Q. Now, sir, when you were putting this together, you stated
15 that you were provided the information by government's counsel,
16 correct?

17 A. Correct.

18 Q. In part. There may have been agents also, correct?

19 A. That's correct.

20 Q. And, we're starting the timeline with 2015. But, this
21 would show that Mark Scott is working at Locke Lord at the
22 time, correct?

23 A. Judging by the e-mail address, you can make that inference.

24 Q. And the outline does not state when Mark Scott became a
25 lawyer, does it?

JBF3SC01

Kroll - Cross

1 A. No.

2 Q. And it does not state how long he has been a lawyer,
3 correct?

4 A. Correct.

5 Q. And it does not show, when you look at 2701, that Mark
6 Scott's practice related to any specific area such as mergers
7 or acquisitions or any other type of reference, correct?

8 A. I don't believe in the timeline.

9 Q. So the person who is reading this, looks at this and there
10 is no background as to why is there a communication between
11 Gilbert Armenta and Mark Scott. Correct?

12 A. Correct. This document starts the timeline.

13 Q. And it also does not say what or who Gilbert Armenta is in
14 relation to Mark Scott and Locke Lord. Correct?

15 A. In this document?

16 Q. Yes.

17 A. No, sir.

18 Q. Or in our timeline, 2701. Correct?

19 A. Perhaps in the underlying documents it may explain more.
20 But in the descriptions in the narrative field of the timeline,
21 it does not go into that detail.

22 Q. So, the reader of 2701 doesn't know whether or not Gilbert
23 Armenta is a longtime client of Mark Scott's, for instance;
24 isn't that correct?

25 A. That's correct.

JBF3SC01

Kroll - Cross

1 Q. And it does not know whether or not they had worked on
2 large transactions in the past, correct?

3 A. Yes.

4 Q. Now, you advised us that you've started the timeline on
5 this date, but when you read the particular document, it
6 appears clear on the face that this is an introduction via
7 e-mail, and that Mark Scott has never met Ruja Ignatova prior
8 to this date. Isn't that true?

9 A. Perhaps on its face, yes.

10 MR. GARVIN: Mr. Barile, would you be kind enough to
11 take that down and put up Government's Exhibit 1005, sir. And
12 would you be kind enough to enlarge the top portion, please.

13 Q. We saw that the first e-mail was from September 30. And
14 our second entry or our second e-mail now shows that Mr. Scott
15 responds and says hi to Ruja, and explains that he's on his way
16 to Germany, and he provides his cell phone number.

17 MR. GARVIN: Would you kind be kind enough to take
18 that down, because I didn't realize the cell phone number was
19 there. Thank you, Mr. Barile.

20 MR. FOLLY: Can we just take this down for a moment?

21 THE COURT: It is down.

22 MR. GARVIN: Your Honor, at this time we would move
23 into evidence Government's Exhibit 105.

24 THE COURT: 1005?

25 MR. GARVIN: Yes, I'm sorry.

JBF3SC01

Kroll - Cross

1 MR. FOLLY: Your Honor, can we just have a moment to
2 review it.

3 THE COURT: Sure. Did you take it down, Mr. Barile?

4 MR. FOLLY: No objection, your Honor.

5 THE COURT: 1005 will be received.

6 (Government's Exhibit 1005 received in evidence)

7 THE COURT: Do you have a defense number?

8 MR. GARVIN: Your Honor, we would number it Defense
9 Exhibit 900 to prevent confusion.

10 THE COURT: Okay.

11 Q. Sir, you have it back up in front of you, the exhibit?

12 A. I see 1005.

13 Q. Okay. That's all I wanted to ask. All right, so it
14 appears that he responded, meaning Mr. Mark Scott, to the
15 introduction by Gilbert Armenta. Is that correct?

16 A. Correct.

17 Q. And he stated at that time that he was on his way to
18 Germany, but that they could talk on Sunday. Correct?

19 A. Asking if they could speak on Sunday, yes.

20 Q. All right.

21 MR. GARVIN: May we take that down, sir, and put up
22 1006. If you could please enlarge the top, sir. Thank you.

23 Q. You made reference to this during your direct examination
24 yesterday. This is Government's Exhibit 1006, right?

25 A. Correct.

JBF3SC01

Kroll - Cross

1 Q. It is actually the second entry on your exhibit list?

2 A. Correct.

3 Q. It's described as "Scott meeting invitation re Ignatov TC
4 to discuss money transfer/laundering issues." Is that
5 accurate?

6 A. Correct.

7 Q. Now, sir, it would be fair to say that Mark Scott has not
8 spoken with Ruja Ignatova; isn't that right?

9 A. I can't make that assumption.

10 Q. Well, you did see the introduction from Exhibit 104, right?

11 A. What appeared to be an introduction, yes.

12 Q. 1004. And did you see Mark Scott's response in 1005,
13 right?

14 A. Correct.

15 Q. And now you see that he's placed in the calendar that he's
16 going to have a TC. Do you understand that to be shorthand for
17 telephone call?

18 A. It may be.

19 Q. And that he's going to have a telephone call with Ruja
20 Ignatova, that's put into his calendar starting Sunday at
21 8:30 p.m. and ending anticipated at 9 p.m. You see that,
22 right?

23 A. Yes, sir.

24 Q. That is consistent with 1005, that we just saw, that said
25 let's try to talk on Sunday, right?

JBF3SC01

Kroll - Cross

1 A. Yes.

2 Q. And it's consistent with 104, because when we look at 104,
3 it makes a reference that it was Wednesday, and it was
4 September 30, so, that would make the 3rd, which is 1005,
5 Saturday, and this would be the 4th, which would be Sunday. So
6 it's right chronologically; isn't that correct?

7 A. Correct.

8 Q. Let's look at the words "telephone call to discuss money
9 transfer/laundrying issues." At this point in time, all we
10 know is that Mark Scott is a lawyer at Locke Lord, correct?

11 A. Judging by his e-mail address, it's a Locke Lord e-mail
12 address.

13 Q. And based on the e-mails that we see, he has never met face
14 to face Ruja Ignatova, correct?

15 A. Again, I can't make that assumption.

16 Q. Well, the e-mails say that Mark Scott's on his way to
17 Germany, do they not?

18 A. Yes.

19 Q. Sir, when you see this, would you agree that it would be
20 reasonable to -- let's say it would be reasonable to interpret
21 this shorthand as meaning that these are legal matters that a
22 lawyer plans on discussing with a future client?

23 A. I can't make that assumption. I could judge from the Locke
24 Lord e-mail address just that he may or may not work for Locke
25 Lord.

JBF3SC01

Kroll - Cross

1 Q. Would it be fair to -- would it be consistent with your
2 common sense, and your training as a special agent, that
3 somebody that you never knew, that you just got introduced by
4 e-mail two or three days earlier, that a lawyer would be having
5 a conference and place it into his calendar, saying that
6 they're going to discuss money laundering in an improper way?

7 A. I'm afraid I can't make that assumption.

8 Q. Well, let's go to where it says "location firm BD."

9 Sir, do you understand that lawyers are required to
10 keep their time on time sheets when they work in a major law
11 firm?

12 A. It's best practice to do so.

13 Q. And do you know that it's pretty tedious to always be
14 writing down every six minutes what is you are doing, so they
15 develop shorthand or abbreviations?

16 A. It's likely.

17 Q. So when you see things here like BD, you understand that to
18 mean business development?

19 A. It could.

20 Q. And business development means getting a new client. You
21 understand that, right?

22 A. It may.

23 Q. And TC means telephone call. Correct?

24 A. In this instance it could.

25 Q. There is nothing about this entry that would suggest that

JBF3SC01

Kroll - Cross

1 Mark Scott was doing anything improper, other than being a
2 lawyer; is that right?

3 A. On its face, it says what it says.

4 Q. Thank you, sir.

5 MR. GARVIN: Mr. Barile, if you would be kind enough
6 to put up Government's Exhibit 101. I believe it's already in
7 evidence.

8 Q. Sir, do you see the picture on the screen now?

9 A. I do.

10 Q. Do you recognize that as Ruja Ignatova, the founder of
11 OneCoin?

12 A. I do.

13 Q. Your timeline, does it state when Ruja Ignatova founded
14 OneCoin?

15 A. With respect, counsel, I reviewed hundreds of documents in
16 this review, so I'm not certain it explicitly stated that.

17 Q. Is there an entry at all showing when OneCoin began the
18 multilevel marketing strategy?

19 A. Again, I would have to revert to my previous comment.

20 Q. You have made reference in your timeline to a great deal of
21 money and its movement, correct?

22 A. Yes.

23 Q. And there are underlying documents in the form of bank
24 records that support that, correct?

25 A. Correct.

JBF3SC01

Kroll - Cross

1 Q. Does your timeline reflect the gross sales during this
2 period of time of OneCoin?

3 A. I'm not certain if they do.

4 Q. Did you see anything in all those bank records that were
5 given to you that showed that the gross sales of OneCoin,
6 cumulatively, were in excess of \$4 billion?

7 A. The scope of my review is relatively narrow, so, it could
8 have been within the substance of those documents, but that was
9 not part of my review.

10 MR. GARVIN: All right. Could we please, Mr. Barile,
11 can we please take that down and put up Government's Exhibit
12 1012. Could you please enlarge the bottom portion. The bottom
13 half. Thank you.

14 Q. Sir, you see on December 9, you made reference to this
15 exhibit on direct examination, but Mr. Scott is writing to Ruja
16 Ignatova on December 9; is that correct?

17 A. It appears so, yes.

18 Q. Now, I want to talk about Ruja Ignatova and the amount of
19 money that she has made with OneCoin.

20 Is it common that people who have -- I would say huge
21 amounts of money, the über wealthy amongst us, do those people
22 often have security concerns?

23 A. I would have to assume that's a possibility.

24 Q. And for instance, are those types of people, do they have a
25 potential or possibility of being targets of kidnapping, for

JBF3SC01

Kroll - Cross

1 example?

2 A. They may.

3 Q. And in addition to that, is it also widely recognized that
4 people can hack, meaning computer hackers, can cause problems
5 for people who are very wealthy, like trying to get into their
6 computers to get their banking information?

7 A. Hackers can cause issues to anyone of any wealth.

8 Q. Okay. So, is it common that people that have those
9 concerns are very motivated to have the best security possible?

10 A. Sure.

11 Q. And this is something that is just widely recognized; is
12 isn't that true? It's common sense, right?

13 A. You can make that assumption, sure.

14 Q. All right. So let's go back to our exhibit, and it says
15 "How is today for our call? I had on my calendar that you may
16 be with Gilbert today. In the meanwhile, I would need a list
17 of how exactly your material assets are each held and have some
18 more questions. I am looking for bank accounts, IP," do you
19 understand that to be lawyer's abbreviation for intellectual
20 property?

21 A. It could be.

22 Q. "Real estate including leases. Where are key employees
23 paid from? Where do you interface with the internet?
24 Jurisdiction of key employees and board members."

25 Do you see that, sir?

JBF3SC01

Kroll - Cross

1 A. Yes.

2 Q. That information, are you familiar with the work of a
3 person who is doing trust work, that is legal work that's
4 called trust? Do you understand what I'm saying?

5 A. I'm not -- I understand what you are saying, but I am not
6 intimately familiar with the work that's done for trust.

7 Q. Well, do persons who have extraordinary wealth often do
8 estate planning and corporate planning by using trusts? Isn't
9 that true?

10 A. They may.

11 Q. Is it also true that one of the advantages of using a trust
12 is that it permits anonymity. In plain words, the person who
13 is wealthy does not have to put his name on the trust. You
14 understand that, right?

15 A. Again, I'm not familiar.

16 Q. Well, when you look through these documents, weren't there
17 references that Scott, Mark Scott, was working on a trust?

18 A. Yes.

19 Q. And he's working on a trust and he has to have some basic
20 information to work on the trust. Isn't that true?

21 A. I've seen that in the documents, yes.

22 Q. And part of the information that's being asked now are
23 those things that we just read. Isn't that true?

24 A. This is what's being asked, yes.

25 Q. Now, does your timeline show where Robert Courtneidge is

JBF3SC01

Kroll - Cross

1 introduced to Ruja?

2 A. An exact point in time, I'm not certain.

3 Q. And you understood that Robert Courtneidge also was
4 associated with the law firm of Locke Lord?

5 A. He may have been.

6 Q. Well, the documents that you've included in your timeline
7 say that, don't they?

8 A. It would suggest so, yes.

9 Q. And isn't it also true that Ruja Ignatova flatout tells
10 Mark Scott, listen, you're going to do the legal corporate
11 structure and Robert's going to do whatever I need done with my
12 cryptocurrency business. Isn't that true?

13 MR. FOLLY: Objection.

14 THE COURT: Overruled.

15 A. There may have been e-mails where that type of thing is
16 discussed.

17 MR. GARVIN: Would you be kind enough to move up,
18 Mr. Barile, on the same document.

19 Q. Now it says "I figured she would bring it to me in FFM or
20 send via fax. She and I spoke about security issues."

21 Now, sir, when you're talking about security issues,
22 isn't part of security issues that you don't want someone who
23 is unauthorized, like a hacker, to have your confidential bank
24 information. Isn't that true?

25 A. Security issues can mean different things depending on the

JBF3SC01

Kroll - Cross

1 circumstance.

2 Q. Well, below, you have Gilbert Armenta saying "Don't have
3 her send any bank or cash information to e-mail, all
4 discoverable."

5 The last thing that you would want is a hacker to
6 discover your banking information, including the amounts in
7 your account, and the account numbers, correct?

8 A. I'm not certain if it would be the last thing you want.
9 But, you wouldn't want a hacker to have any of your
10 information.

11 MR. GARVIN: Thank you, sir. You may take that down,
12 please. Could you please now put up 1022, sir. Enlarge the
13 top.

14 Q. So now we have something at the top from Mark Scott, and
15 we're now at the end of January, correct, sir?

16 A. Yes.

17 Q. And it says "Can we connect on Ruja please? Would like to
18 start."

19 Would you agree, sir, that that suggests that Mark
20 Scott had now, in the end of January, hasn't even started his
21 representation of Ruja Ignatova?

22 A. I can't make that assumption that he started anything.

23 Q. You included several payments to Mark Scott. Did you see
24 any payments that were made before January 29, 2016?

25 A. May I review it?

JBF3SC01

Kroll - Cross

1 Q. Certainly.

2 A. Not in the timeline.

3 Q. Would that suggest to you, sir, that he had not been
4 retained yet?

5 A. I can't make that assumption.

6 MR. GARVIN: Can we please scroll down on this
7 particular exhibit. Thank you. We can take it down.

8 Mr. Barile, can we please have 1025 placed on the
9 screen.

10 Q. Sir, you read this yesterday during direct examination,
11 correct?

12 A. Yes.

13 (Continued on next page)

JBF7SCO2

Kroll - cross

1 BY MR. GARVIN:

2 Q. And Ruja Ignatova two days later answers Mark Scott saying
3 that the time is ticking, she wants to know what are the next
4 steps and how can we move, please. If WE want to meet, I'm in
5 London from 5.2 through 15.2.

6 Do you understand that to be February 5 through
7 February 15, sir?

8 A. It would appear so.

9 Q. So would it be fair to say that Ruja Ignatova now is at the
10 very end of January and she is stating how can we move, please.
11 Is that right?

12 A. Yes.

13 Q. Would you be kind enough to take that down. I would like
14 to talk about secure telephone communications. You have
15 included in your timeline several references to K phones or
16 Krypto phones as they're commonly referred to, but these are
17 secure telephone devices; is that correct?

18 A. Yes.

19 Q. And they're supposed to -- unlike a cell phone, which is
20 easily hacked into, these telephones are supposed to be more
21 difficult to hack into; isn't that correct?

22 A. You keep referring to hacking, but correct.

23 Q. In this case I'm saying someone hacking into -- if there is
24 someone unauthorized who figures out electronically how to get
25 into either your computer or your telephone, right?

JBF7SCO2

Kroll - cross

1 A. OK.

2 Q. Now, sir, now we are into February of 2016. There is a
3 reference subject re: AW: Phones. And the statement says,
4 "Keep at 10 a.m. Let's not mess up her entire day. I can
5 discuss remainder once we get crypto cell going. Smilely
6 face." Do you see that?

7 A. Yes.

8 Q. Now, does that suggest to you, sir, that the crypto cell
9 phone had not been used up to that point?

10 A. I can't assume that it hasn't been used prior.

11 Q. Well, how do you interpret, sir, the statement "I can
12 discuss remainder once we get crypto cell going?"

13 A. Sure, if I was to draw an inference, I would say so, yes.

14 Q. Now, what inference do you draw from someone placing a
15 smilely face at the end of a statement?

16 A. There could be many varied reasons someone would do so.

17 Q. Well, would one of those reasons be that it's what someone
18 would call tongue in cheek, or it's someone not taking the
19 statement as seriously as it might sound?

20 A. I personally don't use smilely faces. It could be used I'm
21 sure a number of ways.

22 Q. You wrote that to me with a smilely face. OK, fair enough.

23 So, we will please take that down: And if we could
24 please place up Government Exhibit 1037.

25 All right. In this particular e-mail -- which is now

JBF7SCO2

Kroll - cross

1 the middle of February, subject is Passp copy. Do you
2 understand that to be passport copy?

3 A. It likely means passport, yes.

4 Q. OK. And Mr. Scott writes, "This looks good. Will you send
5 a new phone so I can start speaking with Ruja directly. Will
6 need more and more contact over the next month."

7 Sir, on the plain meaning of this e-mail, does it
8 appear that Mr. Scott has not started speaking with Ruja
9 directly on one of these secure phones?

10 A. I can't make that assumption. It says a new phone, so it
11 may not make reference to a previous phone of that nature.

12 Q. Is there anything in Government Exhibit 2701 that would
13 suggest that there was a previous phone?

14 A. In the timeline?

15 Q. Yes.

16 A. Again, there may have been. I'm not certain.

17 Q. Would you be kind enough to bring down and place up 1056-T.

18 MR. FOLLY: Your Honor, if we could just have a
19 moment. I don't think this is in evidence.

20 THE COURT: OK.

21 MR. FOLLY: No objection, your Honor.

22 THE COURT: Very well. Do you have a number for that,
23 Mr. Garvin?

24 MR. GARVIN: Yes, your Honor, I believe the last one
25 was 800. This one would be 801.

JBF7SCO2

Kroll - cross

1 THE COURT: 900.

2 MR. GARVIN: Then 901.

3 (Defendant's Exhibit 901 received in evidence0

4 Q. OK. This is an e-mail back and forth between Ruja Ignatova
5 and Mark Scott. Do you see that, sir?

6 A. Yes.

7 Q. And in the middle --

8 If we could please enlarge the portion in the center
9 section. Thank you.

10 In the middle there is a discussion as to a person
11 named G. Do you see that, sir?

12 A. Yes, it appears to be an individual.

13 Q. And did you understand that that is an abbreviation for
14 Gilbert, meaning Gilbert Armenta?

15 A. It may be.

16 Q. And, sir, if we could, let me read this to you.

17 "Understood. We will discuss this all personally by phone. We
18 agree with G that he holds the money for us in the interim.
19 That's all. We do not have joint projects -- I have some
20 Mastercards with him. I do not believe that he and I would
21 invest well together -- personality clash.

22 "I thought he uses some of our money -- he has quite a
23 lot of our money. More than 150 and I told him that I will get
24 it home over the next months. Thanks for your trust. R."

25 Now, sir, doesn't it say in the document that the 150

JBF7SCO2

Kroll - cross

1 is being held by Gilbert and it is what Ruja Ignatova describes
2 as our money? Isn't that true?

3 A. It appears on its face that this is being held by G, yes.

4 Q. And did you understand that 150 means \$150 million?

5 A. I couldn't make that assumption.

6 Q. Now, when you see references --

7 Well, thank you. We can take that down, please. OK.
8 So let's go to the top third portion.

9 "Great. We talk Friday. And thanks for your
10 patients. But we do have to do it right ..."

11 Now, is it fair to say that Mark Scott is writing to
12 Dr. Ruja Ignatova and he is telling her that what they're going
13 to be doing has to be done right?

14 A. That's what it says.

15 Q. He also tells her, "Notify G slowly when you want your
16 monies. He is just undertaking numerous transactions and I
17 don't want to participate in it non-voluntarily. Your company
18 and banking structure is nearly finished."

19 Does that tell you, sir, that Mark Scott is working on
20 corporate and banking structures for Ruja Ignatova?

21 A. Company and banking structure. It doesn't necessarily say
22 that he is working on it, but it does mention that it is nearly
23 finished.

24 Q. So you're saying it may not be him that's working on it,
25 but somebody is working on it and it's nearly finished,

JBF7SCO2

Kroll - cross

1 correct?

2 A. On its face that's what this e-mail suggests.

3 Q. Well, let's read on. "We now have to deal with your trust
4 so that we can transfer to it the ownership of the island
5 registered fund after formation."

6 Is this one of the documents that refer to the fact
7 that Mr. Scott is working on a trust for Ruja Ignatova?

8 A. It may.

9 Q. Well, the words "your trust" are a hint, right?

10 A. Your trust can be interpreted as your personal trust or the
11 trust itself, the actual entity of the trust.

12 Q. "We have to meet for this purpose. We will discuss it. Do
13 you have a crypto number?"

14 We are now in March and Mark Scott is asking Ruja
15 Ignatova if she has a crypto number; is that correct?

16 A. Yes.

17 Q. Thank you, sir. If we can please take that down, sir.
18 Please revisit Government Exhibit 1012 for one moment. Thank
19 you, sir. We can take that down.

20 If we can please now go to 1038. This is another
21 e-mail that says. "Wheels are in motion on structure. Should
22 have solid results later next week. When back from Asia?"

23 Do you see that, sir?

24 A. Yes.

25 Q. You can take that down, Mr. Barile. Please put up 1040.

JBF7SCO2

Kroll - cross

1 If you could please enlarge the bottom portion.

2 All right. It says, "Hi Ruja. New developments."

3 Do you see that?

4 A. Yes.

5 Q. It says, "Speaking to attorneys in all relevant countries,
6 I can get the basic structure for transfers and signing
7 authority in place for within 8 business days."

8 Is that correct?

9 A. That's what it says, correct.

10 Q. "With that you can sign contracts, hire agents, etcetera
11 ..."

12 Now, does this statement still relate to the structure
13 that had been previously discussed?

14 A. It may. I can't draw that conclusion.

15 Q. "The remainder for production and autonomy will be 4-6
16 weeks. This will afford you with complete privacy, but needs
17 an additional layer with admin etcetera will cost a material
18 amount. Much less" -- it appears to have been cut off.

19 Correct?

20 A. Correct.

21 Q. Now Mark Scott says, "when transferring funds going
22 forward, I will need to know name of account holder and where
23 the funds originate."

24 Do you see that, sir?

25 A. Yes.

JBF7SCO2

Kroll - cross

1 Q. Now, he is writing this to Ruja Ignatova, correct?

2 A. Yes.

3 Q. Do you know what other places funds may originate from
4 other than Ruja Ignatova?

5 A. I do not know.

6 Q. In other words, when you put together your timeline, did
7 you question why is he asking Ruja Ignatova where do the funds
8 originate?

9 A. No.

10 Q. "We can communicate that via fax or K. phone."

11 Now, when you avoid an e-mail and you send by fax,
12 isn't it generally known that fax machines are much more
13 difficult to hack into than an e-mail or a computer?

14 A. Sorry. Fax machines are more difficult to hack into than
15 e-mail or computer?

16 Q. Yes, more difficult.

17 A. I'm not certain, but I would assume so.

18 Q. Well, doesn't the United States government, in particular
19 the Internal Revenue Service, refuse to accept e-mails; they
20 have to be faxed because people are sending in their Social
21 Security number on tax returns and tax matters? Isn't that
22 true?

23 A. That's possible. I'm not familiar with the IRS practices.

24 Q. There is nothing improper with wanting to go keep the
25 amount of money you have and bank account numbers confidential,

JBF7SCO2

Kroll - cross

1 is there?

2 A. Nothing improper about that.

3 Q. Let's move on. "Each party will have to sign a
4 subscription agreement to the investment fund and provide some
5 KYC. Will be simple process."

6 At this point did you understand that Mr. Scott is
7 telling Ruja Ignatova that each person that invests in the
8 private equity fund is going to have to sign a subscription
9 agreement and provide "know your customer" supporting
10 documentation? Isn't that right?

11 A. I'm not certain if it's each party that invests in it, but,
12 yes, it would suggest the latter part of that.

13 Q. Well, sir, does it make any sense to have somebody sign the
14 subscription agreement and provide KYC if they're not going to
15 place funds in an investment fund?

16 A. No.

17 Q. OK. Thank you, sir.

18 We can take that down. If we could please put up
19 1043-T.

20 Now, we have a question asked by Mark Scott to Ruja
21 Ignatova that says, "I will send you the preliminary agreement
22 as soon as it's done. And then mini KYC. Does all of the
23 money originate from one company or several or private?"

24 Do you see that, sir?

25 A. Yes.

JBF7SCO2

Kroll - cross

1 Q. Now, let's look at the subject. It says "Re:
2 Attorney/Client Privileged Communication.

3 Do you see that?

4 A. Yes.

5 Q. So does that indicate to you that Mark Scott writing this
6 has designated it as a legal document between a lawyer and his
7 client?

8 A. How he designates it I can't assume, but it is in fact the
9 subject of the e-mail.

10 Q. I'm sorry?

11 A. It is in fact the subject of the e-mail.

12 Q. Right, the attorney/client privileged communication.

13 A. Yes.

14 Q. Is it also clear that Mr. Scott is once again asking where
15 does all of the money originate from? He says does all the
16 money originate from one company or several or private. Do you
17 see that?

18 A. Yes.

19 Q. So once again he is asking about the source of funds,
20 right?

21 A. Yes.

22 Q. And did you interpret private to mean individually as
23 opposed to in the form of an entity?

24 A. It appears so.

25 Q. If we could please put up Government Exhibit 1048. If you

JBF7SCO2

Kroll - cross

1 could please enlarge the top third.

2 There was some discussion about this yesterday. This
3 particular bank is FirstCaribbean International Bank; is that
4 correct? Do you recall that?

5 A. Where are you referencing, sir?

6 Q. Yes, the first sentence, sir. I'm sorry, I should have
7 tried to guide you.

8 A. Yes.

9 Q. I apologize. "I have attached the completed corporate
10 questionnaire from FirstCaribbean International Bank and am
11 also providing for your and their benefit the following KYC
12 materials." And Mr. Scott lists quite a few things afterwards.
13 Do you see that?

14 A. That's correct.

15 Q. If we could please go to page 2. All right. And you will
16 remember, I hope, that there was some issues about this
17 document.

18 In particular, if we can enlarge the middle.

19 The statement says, "The purpose of the business is to
20 establish and manage a family office for a few select existing
21 clients of mine. I have been a private equity and mergers and
22 acquisitions attorney..."

23 Do you remember earlier, sir, I asked you if there was
24 anything in the timeline that would show that Mr. Scott was in
25 private equity mergers and acquisitions? Does this refresh

JBF7SCO2

Kroll - cross

1 your memory, sir?

2 A. Yes.

3 Q. OK. Let me read on. "I have been a private equity and
4 mergers and acquisitions attorney for more than 20 years and a
5 few of my major clients have asked me to work for them
6 personally now to consult them on investments. The BVI is tax
7 advantageous to all of the investors and none of them has a
8 connection to the United States. I am the only party with tax
9 reporting requirements on my earned fees in the U.S. Further,
10 the investment focus will be in Europe and the BVI is
11 recognized as a transparent and regulated jurisdiction, which
12 will make conducting business easier."

13 Do you see, that sir?

14 A. Yes.

15 Q. And did you in fact find that Mr. Scott did file his tax
16 returns for these years that are in issue?

17 A. It may be within the documents that were provided.

18 Q. Sir, in preparing this document, 2701, have you seen the
19 tax returns that were filed by Mr. Scott?

20 A. Again, there were hundreds of documents that were viewed.
21 I did see tax returns as part of some of the account set-ups
22 and the KYC, but to state for certain what's listed on those
23 tax returns, I can't say for sure.

24 Q. Well, let me see if I can refresh your memory, if at all.
25 Let me give it one shot. Did you see that Mr. Scott reported

JBF7SCO2

Kroll - cross

1 millions and millions of dollars on his tax returns?

2 A. I can't say for certain, no. I apologize.

3 Q. Did you see that he also reported as income the legal fees
4 that you have listed in 2701?

5 A. Say again. I'm sorry.

6 Q. Yes. You have listed in 2701 Mr. Scott receiving funds on
7 several occasions, correct?

8 A. That's correct.

9 Q. You're not telling the ladies and gentlemen of the jury
10 that Mr. Scott didn't report that on his tax return, are you?

11 A. The scope of my review did not go into depth into the tax
12 returns.

13 Q. OK. But in fact you did see tax returns that were filed in
14 this case, correct?

15 A. As I said before, I saw some tax returns in the account
16 opening documents and some of the KYC paperwork as well.

17 Q. Mr. Barile, you can take that enlargement down and take us
18 back to the first page, please. I'm sorry. Can we go to the
19 second page, upper right-hand corner. Yes, sir. Thank you.

20 Sir, do you see this particular FirstCaribbean
21 International Bank is located in the British Virgin Islands,
22 Road Town?

23 A. Yes.

24 Q. Now, there were some issues discussed yesterday, and this
25 document I believe was included in your timeline, correct?

JBF7SCO2

Kroll - cross

1 A. I believe so.

2 Q. Sir, isn't it a fact -- well, let me ask it a different
3 way. Did you ever see a bank statement from FirstCaribbean
4 International British Virgin Islands?

5 A. I can't recall.

6 Q. Would it be fair to say that this bank account was never
7 opened at this bank in the British Virgin Islands?

8 A. I can't say for certain. If there is perhaps a document
9 that I can review, it might help.

10 Q. There is a lack of documents. You do understand that there
11 is a similarly named bank in the Cayman Islands, correct?

12 A. Similarly named to what?

13 Q. FirstCaribbean International Bank.

14 A. I believe so.

15 Q. But this application for this account never resulted in an
16 account being opened; did you know that?

17 A. I don't believe that was part of my review. I don't
18 recall.

19 Q. But don't you feel that it would be important to know that
20 if the bank account was never opened using this application,
21 that would be something you would want to know, right?

22 MR. FOLLY: Objection, your Honor.

23 THE COURT: Overruled.

24 A. It's not for me to want to know or not. My part is very
25 objective.

JBF7SCO2

Kroll - cross

1 Q. OK. So sitting here, as we sit here, we don't know one way
2 or the other whether this actually resulted in an account being
3 opened in the British Virgin Islands.

4 A. I can't say for certain, no.

5 Q. OK. Thank you. Fair enough.

6 Can you take that down and please go to Government
7 Exhibit 1055, and if we could please enlarge the top.

8 All right, we're in March 2016. Again the subject is
9 listed as attorney/client privileged communication. Do you see
10 that, sir?

11 A. Yes.

12 Q. And Mr. Scott says, "Hi Ruja. For your information,
13 Gilbert asked me about your new structure."

14 Now, we have seen through other documents that
15 Mr. Scott -- or someone at Locke Lord -- is working on her
16 structure; is that correct?

17 A. It would appear so.

18 Q. "I gave nothing away, but stating that you will be
19 operating through Ireland mainly. I am not sharing that you
20 will be banking off-shore and where. He still thinks that you
21 need to make changes. Trust me, you don't. What I am creating
22 is best for you."

23 Is it fair to say that this would show -- or tends to
24 show -- that Mark Scott is keeping the information of his
25 client confidential from Gilbert Armenta even though Gilbert

JBF7SCO2

Kroll - cross

1 Armenta was the one who introduced Ruja Ignatova?

2 A. If you say so, yes.

3 Q. And that would be the proper thing for a lawyer to do,
4 isn't it?

5 A. Yes.

6 Q. OK. Can we please put up 1407, sir.

7 Yesterday there was some discussion about links and
8 articles written on family office. Do you recall that, sir?

9 A. Yes.

10 Q. And the first one that was discussed was Government Exhibit
11 1407 from March of 2006, and we see that Mr. Scott is sending
12 himself an e-mail with this particular link; is that correct?

13 A. Yes.

14 Q. And let's talk about that for a second. Family offices, in
15 particular, there is nothing wrong with that type of corporate
16 set-up, is there?

17 A. As far as I know, no.

18 Q. And lawyers, when they're asked to do something, there is
19 nothing wrong with them doing some research and double checking
20 if they don't do something routinely or regularly; isn't that
21 correct?

22 A. Can you rephrase?

23 Q. Yes. There is nothing wrong with a lawyer doing research,
24 correct?

25 A. Correct.

JBF7SCO2

Kroll - cross

1 Q. And in fact you would want a lawyer who does not have a
2 great deal of experience in something to do some research
3 before he set out to accomplish a project; isn't that true?

4 A. That's true.

5 Q. Could we please go to 1408.

6 1408 is another e-mail sent from Mark Scott to
7 himself, and the subject matter is alignment with L.P.s.

8 Did you understand L.P. to be limited partnerships?

9 A. Most likely.

10 MR. GARVIN: Your Honor, I have just been told that
11 this particular document was not moved in, so we would move it
12 in as Defendant's 902.

13 THE COURT: Any objection?

14 MR. FOLLY: No objection.

15 THE COURT: 902 will be received.

16 (Defendant's Exhibit 902 received in evidence)

17 Q. You see on this particular document that the link goes
18 directly to Bain Capital Private Equity. Is that right?

19 A. Yes, the web address says so.

20 Q. You know that Bain Capital is a well known business that
21 deals in the private equity circles; is that correct?

22 A. I do know that, yes.

23 Q. All right. May we please go to the next exhibit number,
24 which is 1409, and if we could enlarge it.

25 And we would move 1409 into evidence as defendant's

JBF7SCO2

Kroll - cross

1 next exhibit which I think is 903, your Honor.

2 THE COURT: Any objection?

3 MR. FOLLY: No objection.

4 THE COURT: Defendant's 903 will be received.

5 (Defendant's Exhibit 903 received in evidence)

6 Q. We see yet again Mr. Scott sending an e-mail to himself and
7 it attaches a link, and the subject matter is private equity;
8 is that correct?

9 A. That's correct.

10 Q. Now let's make it clear, private equity funds are
11 commonplace, correct?

12 A. Commonplace is relative, but --

13 Q. Well, there is a substantial portion of the financial
14 sector that deals in private equity funds; isn't that true?

15 A. That's true.

16 Q. I mean not too far from here we could walk to Wall Street
17 and there is a lot of people who work on private equity funds;
18 isn't that true?

19 A. That's true.

20 Q. And we have a situation here where the link is to
21 Blackstone, and anybody who does private equities knows that
22 they are one of the biggest and best; isn't that true?

23 A. I can't say that anyone who works in private equity, but I
24 can attest to the fact that they are big, yes.

25 Q. And there is nothing wrong with a lawyer doing research and

JBF7SCO2

Kroll - cross

1 logging in to Black Stone.com to see if he can get any
2 pointers, to make sure that he is doing things properly and
3 right; isn't that true?

4 A. There is nothing wrong with research.

5 Q. We can take that down and put up 1410, please.

6 OK, sir. This is the last one, but this is another
7 e-mail to Mark Scott, the subject "What is a family office?
8 What are its benefits?" Do you see that?

9 A. Yes.

10 Q. Now, yesterday I believe that you showed the ladies and
11 gentlemen of the jury that Mr. Scott answered some questions --
12 questionnaires -- and that when describing the benefits of a
13 family office and the family office that he was proposing, he
14 literally took the language that he found from this website.
15 Isn't that correct?

16 A. It appeared that there were some similarities, yes.

17 Q. And there is nothing wrong with Mr. Scott researching,
18 finding out what the benefits are, and then repeating those
19 benefits as accurately as possible to the financial institution
20 that he is sending the answered questionnaire, is there?

21 A. As you just said it, no, there is nothing wrong with that.

22 Q. Now, even if he copied it word for word, if he believed
23 that those were the benefits, that's all that matters, isn't
24 it? I mean we're not talking about, oh, this is some type of
25 copyright violation because he paraphrased the benefits of a

JBF7SCO2

Kroll - cross

1 family office, are we?

2 A. I'm not at liberty to say whether or not it was a copyright
3 infringement.

4 Q. Thank you. We can take that down. If we could please put
5 up 1411. If you would be kind enough to go to page 2.

6 Yesterday you were shown this document 1411-2, the
7 Fenero Equity Investments mission statement. Do you recall?

8 A. I recall.

9 Q. Put up Government Exhibit 2201, page 7. If we can enlarge
10 the top paragraph.

11 Now, this is from Government Exhibit 2201, page 7, and
12 it says that "The fund manager receives a (i) management fee of
13 one percent per deposit in the fund, (ii) one percent on the
14 average annual remaining cash balance of the fund and (iii) an
15 eight percent carried interest pari passu with the investors
16 upon any exit." That would be a total of 10 percent, correct,
17 sir?

18 A. Yes.

19 Q. We can take that down, please.

20 Now, sir, in putting together Government Exhibit 2701,
21 and the movement of the funds, would it be accurate to say that
22 there was an excess of 350 million euros that were used to fund
23 the Fenero equity funds? Isn't that correct?

24 A. If that's in the timeline, yes.

25 Q. And you would agree with me that 10 percent -- just simple

JBF7SCO2

Kroll - cross

1 math -- of 350 million would be about 35 million, correct?

2 A. Correct.

3 Q. And that as the manager of the fund, if that written
4 document was accepted by the investors, that Mr. Scott would
5 have earned through the life of these particular funds a
6 minimum of \$35 million, correct?

7 A. Contingent on the language of the agreement.

8 Q. And it is pretty well recognized that those percentages are
9 not out of line; isn't that true?

10 A. I am not familiar with the industry.

11 Q. And isn't it also true that Mr. Scott reported every penny
12 on his tax returns that he filed here in the United States?

13 A. I can't say for certain.

14 Q. If we could please put 2701, the actual timeline, up.
15 3/10/2016. Thank you.

16 You have placed in your timeline "Scott receives
17 \$149,980." What really appears to have happened here is it's
18 \$150,000, but there is a \$20 runner wire fee somewhere along
19 the line, correct?

20 A. That could very well be.

21 Q. And when you look at all your numbers throughout, you will
22 see, as we look at them, that they are always a slight amount
23 off because the bank has made a charge; isn't that true?

24 A. In many cases, yes.

25 Q. All right. So you did note that Mr. Scott received in

JBF7SCO2

Kroll - cross

1 March \$150,000, but isn't it also true that Mr. Scott was
2 acting as a lawyer for Ruja Ignatova for several months before
3 he received that money?

4 A. It would appear so based on the e-mail chain.

5 Q. Thank you, sir.

6 We can take that down. Thank you. If we could please
7 place up Government Exhibit 1118. If you could please increase
8 the top third.

9 Sir, do you know who Max von Amim is?

10 A. I do not.

11 Q. And do you know what JV, joint venture, he is referring to?

12 A. Not based on this document.

13 Q. All right. Take that down.

14 Government Exhibit 2701, did you have a reference to
15 the entity Apex and/or Paul Spendiff?

16 A. There is an entity Apex that's referenced.

17 Q. And can you please tell the ladies and gentlemen of the
18 jury the date and what do you describe it as?

19 A. The date that it's first referenced, sir?

20 Q. Yes.

21 THE COURT: Can you help him out, Mr. Garvin?

22 MR. GARVIN: Yes. The dates Apex would be between
23 June and August 2016.

24 Q. Let me ask a question so we can move it forward. Isn't it
25 fair to say that there is no entry on your timeline regarding

JBF7SCO2

Kroll - cross

1 the Madagascar -- the loan that was being made by the Fenero
2 Equity Fund of \$30 million? Would it be fair to say that?

3 A. Say that again. I'm sorry.

4 Q. Yes. Let me rephrase. During the summer of 2016 you
5 understood that Apex was appointed by Mr. Scott as a fund
6 manager for the Fenero Equity Investment Funds, correct?

7 A. I believe so.

8 Q. OK. And during the summer of 2006 the Fund, Fenero Fund,
9 was approached to make a large loan to an entity called
10 Cryptoreal; isn't that correct?

11 A. It may have been, if there is a document to refresh my
12 recollection.

13 Q. Sir, what I am trying to point out is you do not have an
14 entry on the timeline relating to this transaction; isn't that
15 true?

16 A. What would be the date of that transaction, sir?

17 Q. July or August of 2016. Apex was fired on August 10, 2016,
18 so it is unlikely it would be after that date, sir. You have
19 here August 10, 2016 Scott sends letter terminating engagement
20 to Paul Spendiff at Apex Fund Services. Listed as the letter
21 for that is Exhibit 2288. Does that refresh your memory sir?

22 A. OK.

23 Q. What I'm trying to ask you about is before those services
24 were terminated, isn't it a fact that there was a \$30 million
25 loan that went from the Fenero Fund to Cryptoreal, who was

JBF7SCO2

Kroll - cross

1 buying an oil field in Madagascar from an entity called Barta
2 Holdings?

3 A. It's very possible. If there is a document that reflects
4 that, I would appreciate seeing it.

5 Q. OK. You were provided documents to make this timeline,
6 right?

7 A. I was, yes.

8 Q. And there is no reference to lead the ladies and gentlemen
9 of the jury to the fact that this loan took place, correct?

10 A. If it's not in the timeline, then no.

11 Q. In fact, the timeline does not have the business
12 transactions that the funds entered into, does it?

13 A. Which funds, sir?

14 (Continued on next page)

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JBF3SC03

Kroll - Cross

1 Q. The Fenero Fund?

2 A. The business transactions may be on the list of
3 transactions.

4 Q. Well, I'm giving an example. The first transaction that
5 we're talking about is the loan. Perhaps this will refresh
6 your memory.

7 The seller of the oil field was Dr. Hui and --

8 MR. FOLLY: Your Honor, may we approach and have a
9 sidebar?

10 THE COURT: Why don't we take our first break. It's
11 almost 11 o'clock. 15 minutes. Please do not discuss the
12 case.

13 (Jury excused)

14 (Continued on next page)

JBF3SC03

Kroll - Cross

1 THE COURT: Yes, sir, Mr. Folly.

2 MR. FOLLY: Yes, your Honor. I am just going to wait
3 for the witness to exit.

4 Your Honor, the last 15 to 20 minutes of
5 cross-examination has been entirely inappropriate. This
6 witnesses had no involvement in this case beyond constructing
7 this timeline. He has reviewed documents that relate to this
8 timeline. He has assisted in the creation of the timeline.

9 At this point, Mr. Garvin is essentially trying to
10 testify himself, by repeatedly making assertions and just
11 asking the witness isn't it true, isn't it true, isn't it true.

12 This is not a fact witness. This witness did not have
13 any involvement in any of these transactions. If Mr. Garvin
14 wants to direct him to a particular exhibit, and ask him
15 whether a particular document or e-mail reflects certain
16 information, he is free to do so. But to continue to ask him
17 questions that suggest he has personal knowledge of anything
18 relevant to this case beyond the limited participation he had,
19 which was to create the timeline, and to do some screen grabs
20 of some web pages, it is entirely inappropriate. And it's very
21 misleading to this jury to suggest that this witness has
22 personal knowledge of these events. He doesn't.

23 There are documents which Mr. Garvin can refer him to.
24 And many times, your Honor, the questions relating to those
25 documents, again, have far exceeded this witness's personal

JBF3SC03

Kroll - Cross

1 knowledge. They're calling for speculation repeatedly. And
2 that's just not an appropriate cross-examination of this
3 witness who on direct examination was very limited in his
4 testimony. He testified he reviewed certain documents, he put
5 them on the timeline, and then we asked him to read them, and
6 that was the extent of it.

7 THE COURT: I understand.

8 Mr. Garvin?

9 MR. GARVIN: Yes, your Honor. I have been working
10 through the exhibits, and I apologize, it's been a little bit
11 more tedious than I had hoped, but I've been trying to stick as
12 closely as possible to the exhibit numbers that they went over
13 yesterday, and the exhibit numbers that are listed in the
14 timeline, which is 2701.

15 Now, I do believe that it is also fair for
16 cross-examination to point out that there are key documents
17 that are not in this timeline at all. And I think that it's
18 appropriate to determine if he knew about those documents, and
19 chose not to put them in his timeline, or if he simply didn't
20 know about the documents, I move on from there. I accept his
21 answer.

22 But, I do believe that this timeline is skewed to make
23 Mr. Scott look as bad as possible. It is the greatest hits of
24 the worst, and that it's fair to set the record straight that
25 there are other documents that are simply not included.

JBF3SC03

Kroll - Cross

1 This Apex is the one that drew the objection. They
2 have in their timeline list that Mark Scott terminated Apex and
3 Paul Spendiff. But they did not put in that Apex authorized
4 \$30 million to be transferred for a deal. Now, it seems to me
5 that --

6 THE COURT: I understand what's going on. So, I think
7 it's appropriate for Mr. Garvin to impeach the timeline such as
8 it is. I believe that the questions he's been asking can be
9 characterized as testifying. The jury will be told that the
10 questions, and have been told and will be told again, that the
11 questions that lawyers ask are not evidence. So, he's not --
12 so the jury will be so instructed. So, I think this is
13 perfectly appropriate cross-examination. As Mr. Garvin points
14 out, it is a little tedious, but so was the direct with respect
15 to this timeline. It is what it is. Anything else?

16 MR. GARVIN: No, sir.

17 THE COURT: Don't be late.

18 (Recess)

19 THE COURT: Can we get the agent back in, please. And
20 let's get the jury.

21 (Continued on next page)

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JBF3SC03

Kroll - Cross

1 (Jury present)

2 THE COURT: Mr. Garvin.

3 MR. GARVIN: Thank you, your Honor.

4 BY MR. GARVIN:

5 Q. Sir, we were talking about Apex when we took our morning
6 break, so I'd like to go back to Apex. We have located the
7 Apex entry that is on the timeline and it's dated August 10,
8 2016. Is that correct, sir?

9 A. Correct.

10 Q. That actually is the date Mark Scott terminated Apex; isn't
11 that true?

12 A. Yes.

13 Q. But as we were discussing previously, the timeline is
14 missing at least what could be argued to be two important dates
15 in relation to Apex. The first is a \$30 million loan that Apex
16 approved. Correct?

17 A. That could have been.

18 Q. Well, did anybody give you the documents on Apex that
19 showed that Apex had indeed approved a \$30 million loan from
20 Fenero Funds to, as I said earlier, Cryptoreal?

21 A. It must have been in that production.

22 Q. And the other important date is there is no reference here
23 to the meeting that took place in Hong Kong between the seller
24 Dr. Hui and Neil Bush being on the board of directors or being
25 a personal friend of Mr. Hui, and Ruja Ignatova, is there?

JBF3SC03

Kroll - Cross

1 A. I can't say for certain that that was produced or not.

2 Q. Well, if you would have been given a document with Neil
3 Bush, you would recognize that name as the son of a United
4 States president and a brother of a United States president.
5 You would have remembered that, right?

6 A. If the name is Bush, I wouldn't have said that there was a
7 family relation per se. It is the same name.

8 Q. Ultimately, neither that meeting nor the \$30 million loan
9 approved by Apex are on your timeline, correct?

10 A. That's correct.

11 Q. I want to talk a little bit about internet web articles,
12 because you talked a little bit about them yesterday. Do you
13 recall that?

14 A. Yes.

15 MR. GARVIN: In particular, Mr. Barile, if you would
16 be nice enough to put up 4109, sir. If you could please
17 enlarge the top. Thank you, sir.

18 Q. You discussed this particular e-mail yesterday, right?

19 A. Yes.

20 Q. And can you please read the subject line to the ladies and
21 gentlemen of the jury.

22 A. "Media and false accusations."

23 Q. So this is coming from Irina Dilkinska at OneCoin, correct?

24 A. Correct.

25 Q. And it's being written to Mark Scott Law, correct?

JBF3SC03

Kroll - Cross

1 A. Yes.

2 Q. And the subject is "media and false accusations." Now,
3 when you discussed this yesterday, you talked about the link
4 that was there. Do you recall that?

5 A. Yes.

6 Q. Let's read the first sentence. It says "Morning Mark. In
7 the light of our conference call yesterday and further
8 discussions, please see the link above. Let's discuss at your
9 earliest convenience because this guy is writing such stupid
10 things for a second time. He is based in U.S."

11 From that sentence, it sounds like they had been
12 discussing this guy the day before. Isn't that right?

13 A. Possibly, yes.

14 Q. Well, it says "In the light of our conference call
15 yesterday." Right?

16 A. Yeah.

17 Q. Now, you know that one of the problems with the internet is
18 that you can write most anything on the internet, somebody
19 reads it, they might think it's true; isn't that true?

20 A. Of course.

21 Q. So, just because something gets on the internet, does not
22 necessarily mean that what the person placed on to the internet
23 is accurate. Isn't that true?

24 A. That's fair to say.

25 Q. Isn't it also true that some people that get on the

JBF3SC03

Kroll - Cross

1 internet, they have an agenda. Isn't that true?

2 A. There is a number of people that get on the internet.

3 Q. Well, I want to talk about one specific person. I want to
4 talk about the person who wrote the article that has that link.
5 Did you make any effort to find out who he was?

6 A. No.

7 Q. Would it surprise you if one of his e-mail addresses is
8 usebitcoins.info?

9 A. Would it surprise me?

10 Q. Yes.

11 A. No.

12 Q. Sitting here today, having placed this on your timeline,
13 did you make any effort to find out if the gentleman who wrote
14 that actually is affiliated with bitcoin, a perceived
15 competitor?

16 A. I did not.

17 MR. GARVIN: Could you please put 4109-A on the
18 screen. Could you please enlarge the bottom portion where it
19 say "what is OneCoin."

20 Q. Sir, this says "OneCoin is a proprietary digital currency
21 created by One Coin Limited, a Gibraltar based company." Do
22 you know if that statement is true?

23 A. No.

24 Q. Do you know if OneCoin is or ever has been a Gibraltar
25 based company?

JBF3SC03

Kroll - Cross

1 A. I don't know for certain.

2 MR. GARVIN: Thank you. You can take that down,
3 please.

4 Q. Sir, you read yesterday that article. Do you remember
5 literally the entire article was read yesterday? Do you recall
6 that?

7 A. Almost the entire article, yes.

8 Q. It said a number of not so the pleasant things about
9 OneCoin; is that correct?

10 A. That's safe to say.

11 Q. But, in fairness, here in the United States, it's not what
12 somebody puts on the internet that determines whether something
13 is a proper business or a fraud, it's what a United States
14 court says; isn't that true?

15 A. Well, it's definitely not up to the internet. But --

16 Q. There is nothing on your timeline that any United States
17 court had declared the business or the business model of
18 OneCoin to be improper or illegal. Isn't that true?

19 A. I don't believe that's included in the timeline.

20 Q. And the reason why it's not on your timeline is because
21 that did not occur during this period of time. Isn't that
22 true?

23 A. The reason why it's not in the timeline is because it
24 wasn't in the scope of what was produced to me.

25 Q. Well, if there had been a court that had made such a

JBF3SC03

Kroll - Cross

1 determination, you would have certainly included it in your
2 timeline, right?

3 MR. FOLLY: Objection, your Honor.

4 THE COURT: Sustained.

5 MR. GARVIN: I'd like to please go to Exhibit 1110.
6 Thank you. If you could please enlarge the top, sir.

7 Q. You have an e-mail that you went over yesterday to David
8 Pike from Mark Scott in June of 2016, and he says "let's not
9 e-mail this stuff." Do you see that?

10 A. Yes.

11 Q. What stuff was he referring to, sir?

12 A. Can we expand this e-mail?

13 Q. Certainly. Absolutely.

14 MR. GARVIN: Mr. Barile, if you could, please, enlarge
15 the bottom.

16 A. So the stuff that's being referred to can be any number of
17 things that were discussed between those two parties.

18 Q. Sir, would it be a more readily or less strained
19 interpretation to say that he's referring to confidential bank
20 information, including reference numbers, SWA numbers, dates
21 and amounts and some of the amounts are in excess of \$100
22 million?

23 A. I think that's safe to say.

24 Q. And he's saying let's not be putting this stuff in an
25 e-mail, this is confidential bank information. Isn't that

JBF3SC03

Kroll - Cross

1 right?

2 A. It appears to be confidential bank information.

3 Q. Thank you, sir. You can take that down, please.

4 In your timeline you made reference to Mark Scott
5 returning funds; isn't that correct?

6 A. May I review?

7 Q. Yes, sir. I will try to assist on this if I can be of
8 help. We're talking about Government Exhibits 810-A and
9 1705-A, the time period is approximately April through August
10 of 2017. We can focus on the very first one, which would be
11 1702 B.

12 Mr. Barile, if you can please put that up. Date
13 April 10, 2017.

14 A. Okay.

15 Q. Do you see this document, sir?

16 A. I do see it. It's very small on my screen.

17 Q. Sorry.

18 On your timeline, is there a reference that there was
19 returned \$185 million to Phoenix?

20 A. Yes. It just says returned.

21 Q. This was going from Mr. Scott's funds and to Phoenix, which
22 he is not an authorized signature authority to. Isn't that
23 correct?

24 A. You said it's going from Mr. Scott's funds?

25 Q. Yes. The Fenero Funds?

JBF3SC03

Kroll - Cross

1 A. It's going from Fenero Securities Trading Limited.

2 Q. Okay. And in addition to those funds -- thank you, we can
3 take that down, please. 810-A on April 13, 2017. Do you see
4 that?

5 A. Yes.

6 Q. How do you have that described?

7 A. For April 13, 2017?

8 Q. Yes.

9 A. It's stated as "Fenero Equity Investments II LP at Deutsche
10 Bank Cayman Islands returns \$9,990,110 to Fates Group account
11 at Global Bank of Commerce."

12 Q. And did that close the account?

13 A. Did that action in fact close the account?

14 Q. I'm asking because on your entries -- if you would be kind
15 enough and perhaps, Mr. Barile, I think maybe the better way to
16 do this is to put up 2701, please, sir, and enlarge the portion
17 from 4/10 to 8/22 of 2017. Thank you, sir. Let's see if this
18 helps us a little bit. Let's start at the top, sir.

19 You see 4/10/2017?

20 A. Yes.

21 Q. You've described that as the last transfer from Fenero
22 Securities Trading Limited account and then an account number,
23 correct?

24 A. That's correct.

25 Q. And that was at the Bank of Ireland, to Phoenix Fund, and

JBF3SC03

Kroll - Cross

1 that Phoenix Fund has a bank account in Dubai, and they sent
2 185 million over 11 separate wire transfers, right?

3 A. Yes.

4 Q. That was the last one, correct? That's why it says last
5 transfer?

6 A. Yes.

7 Q. Now, the next entry is the one that we were just talking
8 about, Fenero Equity Investments II, and it is sending
9 9,990,110 to Fates Group. Do you recognize that, sir, as a
10 refund of the exact same amount that Fates Group sent to the
11 Fenero Equity Investments II Fund?

12 A. Is that referencing an earlier payment?

13 Q. Yes. Earlier there was a payment in, and now the exact
14 amount is getting paid back.

15 A. I don't see that here.

16 Q. All right. You have several transfers after that, and each
17 one of them, you state that the Bank of Ireland account is
18 closed. That would be on April 30, 2017, in Exhibit 1705-A.
19 Correct?

20 A. I see that, yes.

21 Q. You also have placed on your timeline on 6/21/2017 that
22 Fenero Securities Trading Limited at the Bank of Ireland was
23 closed. Correct?

24 A. Correct.

25 Q. These are all voluntary closures by Mr. Scott. He has

JBF3SC03

Kroll - Cross

1 chosen to remove all the funds and close the account. Correct?

2 A. I can't say for certain if it was Mr. Scott making those
3 decisions.

4 Q. Well, you have not seen any document from any of these
5 banks suggesting otherwise, have you?

6 A. Neither for or against. I can't say for sure.

7 Q. Let's go to 7/14/2017, Fenero Equity Investments LP,
8 another account number, this time it's at DMS Bank and you also
9 wrote "closed." Right?

10 A. Yes.

11 Q. Can we please notice that date is in 2017. Correct?

12 A. Yes.

13 Q. Did you see any documentation from DMS Bank in 2016, or
14 excuse me, 2018?

15 A. I don't believe so as part of the scope of my task.

16 Q. If we can just transfer down slightly. The last one is a
17 Fenero Financial Switzerland account at DMS Bank, also closed.
18 Right?

19 A. Yes.

20 Q. And you've added in a little note. Approximately 14 months
21 after Scott applies to open account. Right?

22 A. I see that note.

23 Q. You don't see it in parenthesis on 8/22?

24 A. I see that note.

25 Q. By this time, 2017, it would be accurate to say that with

JBF3SC03

Kroll - Cross

1 the exception of \$1 million that was held back for a litigation
2 fee, and 250,000 held back for expenses, all of the funds that
3 Mr. Scott had in the Fenero accounts had been transferred out.
4 Isn't that true?

5 MR. FOLLY: Your Honor, we just ask that we specify a
6 date. It's unclear what time period.

7 THE COURT: Mr. Garvin.

8 MR. GARVIN: Yes.

9 Q. As of August 22, 2017, which is the last entry on your
10 chart. Right?

11 A. As of August 22, 2017, it's fair to say that the entities
12 listed on each of the lines preceding that were closed.

13 Q. Okay. Can you please take that down, sir. Can we put up
14 1344.

15 I'm showing you 1344, which was shown to you
16 yesterday. Do you recall that, sir?

17 A. Yes.

18 Q. Now, can we please enlarge the middle, please. There is a
19 discussion here that Malena Fahient writes to Mark Scott, and
20 they're talking about -- she wants to know when she's going to
21 get the \$1 million back. Do you see that?

22 A. Perhaps not she personally, but it references we. Yes.

23 Q. So, Mr. Scott says, let me rephrase. Malena says, "So
24 after two months we will receive the 1 million back to where we
25 instruct, right?"

JBF3SC03

Kroll - Cross

1 Do you see that, sir?

2 A. Hmm-hmm, yes.

3 Q. So she's telling Mark Scott, she is going to instruct him
4 where to transfer that \$1 million back to. Isn't that true?

5 A. Say again?

6 Q. That she's -- she told Mr. Scott that she was going to
7 instruct him where they wanted the \$1 million returned to.
8 Isn't that true?

9 A. I'm actually not so sure that she is telling him where to
10 instruct or asking him where to instruct.

11 Q. All right. Well let's read what on Thursday, the 7th of
12 June, 2018, at 16:05, Mr. Scott said, "Yes, however we have two
13 months waiting period for the financial commission to accept
14 our financials. But they are accurate of course with backup.
15 Should be fine."

16 Mr. Scott is telling her that he is waiting for the
17 BVI Financial Commission to accept the funds', meaning Fenero
18 Funds', financial statements. Isn't that true?

19 A. It says the financial commission. Whether or not it's BVI,
20 I can't say for certain.

21 Q. All right. We can take that down. Thank you.

22 Sir, in putting your timeline together, and we are
23 getting very near the end, you have an entry on June of 2018
24 and there is a, I would say, a text message or a Snapchat. In
25 3005, 3005-S. But, we don't have to put it up. But thank you.

JBF3SC03

Kroll - Cross

1 Do you recall that Irina Dilkinska and Konstantin
2 Ignatov were having communications between the two of them? Do
3 you recall that?

4 A. The timeline seems to suggest that, yes.

5 Q. Okay. And do you recall that they were talking about the
6 fact that, amongst other things, that Mark Scott wanted to know
7 what was going on, and they were reluctant to tell him
8 anything, because Ruja didn't trust MS. Do you recall that?

9 A. I don't recall. May I see the document?

10 Q. Yes. Certainly.

11 MR. GARVIN: Mr. Barile, if you can please put it back
12 up. 3005 and we're looking for the part, sir -- not that. The
13 part that says "Totally not. Ruja didn't trust MS." There it
14 is. The second one. If you can please enlarge that at 3:40.

15 Q. The one that's in blue, sir. Konstantin Ignatov states
16 "Totally not. Ruja didn't trust MS."

17 Does that refresh your memory, sir?

18 A. It states exactly that.

19 Q. You can take that down, sir. So did you find, in making
20 your timeline, that Ruja Ignatova was a, in general, a very
21 private and secretive person?

22 A. I can't make that inference.

23 Q. All right. The last entry you have is Mr. Scott is
24 arrested in September of 2018. Do you have, sir, any details
25 in your timeline, other than that? It does not appear, sir, is

JBF3SC03

Kroll - Cross

1 that correct?

2 A. Any details in the timeline?

3 Q. The timeline, are there any details about the day that
4 Mr. Scott was arrested? Mine does not appear to be. It seems
5 that's the last entry?

6 A. That is the last entry.

7 Q. All right. Were you given any information about what
8 occurred that day, such as it occurred at 5 o'clock in the
9 morning and Mr. Scott was not home?

10 A. The extent of my information that I received is in
11 Government Exhibit 60.

12 MR. GARVIN: Is Exhibit 60 in evidence?

13 MR. FOLLY: Via stipulation.

14 MR. GARVIN: We can take that down, please.

15 Q. So you don't know whether or not there was any problems at
16 that time, no knowledge whatsoever?

17 A. Outside, I have no outside knowledge besides Government
18 Exhibit 60.

19 Q. Sir, has anybody told you whether there was an argument
20 about turning off all the security cameras, anything --

21 A. No.

22 Q. Do you know if the law enforcement did turn off all the
23 security cameras? Do you know?

24 A. I don't know.

25 Q. All right. Let me move on. Now, you have listed numerous

JBF3SC03

Kroll - Cross

1 banks in your outline, your timeline; isn't that correct?

2 A. Yes.

3 Q. Would it be fair and accurate to say that there is no
4 documentation from any bank that's involved, that's listed in
5 this timeline, that any bank lost one penny in any of these
6 transactions is there?

7 MR. FOLLY: Objection, your Honor.

8 THE COURT: Sustained.

9 MR. GARVIN: Your Honor, may I have one moment? I'd
10 like to confer.

11 THE COURT: Sure.

12 Q. Sir, I'm at the very end. In going through your timeline
13 and the documentation, you did realize that the Fenero Equity
14 Funds were approved funds in the BVI; is that correct?

15 A. When the accounts were established, I assume they were
16 approved to some degree.

17 Q. We just read, did we not, when they were talking about the
18 return of the million dollars, that the commission had to
19 approve the financial statements? You saw that, right?

20 A. There was some e-mails that reference the commission.

21 Q. But in your timeline, you do not have an entry each year
22 where the funds, meaning Fenero Funds, are applying for renewal
23 and are approved by the commission. You don't have that in
24 your timeline, do you?

25 A. Correct, I don't believe that's in the timeline.

JBF3SC03

Kroll - Redirect

1 MR. GARVIN: I have no further questions. Thank you,
2 sir.

3 THE COURT: Redirect?

4 MR. FOLLY: Yes, your Honor. Very briefly.

5 REDIRECT EXAMINATION

6 BY MR. FOLLY:

7 Q. Mr. Barile, if you could go back to Government Exhibit
8 3005-S. And if we could go to the third page we were just
9 looking at.

10 So Special Agent Kroll, if you'll recall on
11 cross-examination, you were asked some questions about this and
12 you were referred to the second blue bubble here that says
13 "Ruja didn't trust MS." Do you recall that?

14 A. I do.

15 Q. Could you just read the bubble that's directly below that?

16 A. "But worker with him ..."

17 MR. FOLLY: You can take that down. Mr. Barile, if
18 you could pull up for the witness and the jury Government
19 Exhibits 1411 side by side with 3301. If you could scroll down
20 to the section of the mission statement pertaining to track
21 record.

22 Q. Special Agent Kroll, if you could just starting with the
23 section that references our track record. If you could read
24 that section there.

25 A. "Our track record, prior to the fund, has included many

JBF3SC03

Kroll - Redirect

1 successful startups, turnarounds and carve-outs from larger
2 corporate partners. Our strategy is base on five key elements:
3 High quality people, vertical expertise, value added support,
4 global integration, and aligned incentives."

5 Q. Is it fair to say that that reference to the track record
6 is identical to the reference in the Dale Ventures document?

7 A. It's fair to say if not identical, a paraphrase of such,
8 yes.

9 Q. And the Dale Ventures one says "Our track record includes
10 startups, turnarounds, and carve-outs from larger corporate
11 partners."

12 A. Correct.

13 Q. And the other one from the mission statement says "Our
14 track record prior to the fund has included many successful
15 startups, turnarounds and carve-outs from larger corporate
16 partners."

17 A. That's correct.

18 Q. Then also the key elements, is it fair to say, that those
19 are, if not identical, substantially similar?

20 A. That's fair to say.

21 Q. If you could go back to Government Exhibit 4109-A. Special
22 Agent Kroll, you were asked some questions about your knowledge
23 about Jason Tyra and various e-mail accounts and things like
24 that. You don't have any personal knowledge about Jason Tyra,
25 do you?

JBF3SC03

Kroll - Redirect

1 A. No.

2 Q. If you look at the top of this document, there is a
3 reference to Jason Tyra, CPA. Do you see that?

4 A. Yes.

5 Q. And based on your training and experience, you understand
6 that CPA means certified public accountant, correct?

7 A. Yes.

8 Q. We can take that exhibit down.

9 Special Agent Kroll, you were asked some questions on
10 cross-examination regarding crypto phones and encrypted forms
11 of communication. Do you recall that?

12 A. Yes.

13 Q. Special Agent Kroll, are you familiar with the term
14 "countersurveillance techniques"?

15 A. Yes.

16 Q. Can you explain what countersurveillance techniques are and
17 what some of those particular techniques are?

18 A. Countersurveillance techniques are, essentially, could be
19 described as hacking but within a legal manner.

20 Q. I'm sorry. Can you say that again?

21 A. So, essentially, what could be described as hacking, but
22 within the bounds of the law.

23 Q. Within the bounds of the law? Is that what you said? And
24 are you familiar that it's common for individuals engaged in
25 criminal activity to take steps to avoid law enforcement?

JBF3SC03

Kroll - Recross

1 A. Yes.

2 Q. Do some of those steps include, for example, the use of
3 so-called burner phones?

4 A. Quite often.

5 Q. Do some of those steps also include the use of encrypted
6 forms of communication?

7 A. Quite often.

8 Q. Is the reason for that so law enforcement cannot intercept
9 those communications?

10 A. Quite often.

11 MR. FOLLY: No further questions, your Honor.

12 MR. GARVIN: Your Honor, I have one subject. It will
13 be two or three questions on.

14 THE COURT: Okay.

15 RECROSS EXAMINATION

16 BY MR. GARVIN:

17 Q. Would you be nice enough to put 1411 page two back up that
18 was just on the screen. Could you highlight the same portion
19 that was highlighted a few moments ago.

20 Sir, just a few moments ago, you were read and
21 compared this statement -- give us one moment to put it up.
22 You were given or read and compared this statement to another
23 statement that was made.

24 But, I want to go back, there was some slight
25 differences between the two statements; isn't that true?

JBF3SC03

Kroll - Recross

1 A. Slight, yes.

2 Q. And so let's go to whether or not the statement is
3 accurate. "We provide capital and experience to help companies
4 in all phases of development achieve their full potential and
5 our track record, prior to the fund."

6 So in this case that would be prior to the Fenero
7 Funds, correct?

8 A. I can't assume they're referring to the Fenero Funds.

9 Q. "Has included many successful startups, turnarounds and
10 carve-outs from large corporate partners."

11 A. "Larger corporate partners."

12 Q. "Our strategy is based on five key elements: High quality
13 people, vertical expertise, value added support, global
14 integration, and aligned investments." Isn't it --

15 A. "Incentives."

16 Q. Isn't it a fact, sir, every one of those words fits Mark
17 Scott while he was working at Locke Lord and other
18 international law firms?

19 A. Whether they fit what, sir?

20 Q. They fit, meaning that accurately describes what Mark Scott
21 did at Locke Lord, an international law firm, and other
22 international law firms that he previously was associated with?

23 A. I can't speak to his previous associations nor what he was
24 doing at the time.

25 MR. GARVIN: I have no further questions, your Honor.

JBF3SC03

Kroll - Recross

1 THE COURT: Agent Kroll, you may step down.

2 THE WITNESS: Thank you, your Honor.

3 (Witness excused)

4 THE COURT: Government, please call your next witness.

5 MR. DiMASE: May we have a brief sidebar?

6 THE COURT: Okay.

7 (At the sidebar)

8 MR. DiMASE: Judge, we've got two Bank of New York
9 Mellon witnesses coming up. One I anticipate being quite short
10 and one much longer. It's possible the one who is longer will
11 bleed into Monday, depending on the length of the cross. The
12 shorter witness is not available next week. He's traveling
13 internationally.

14 There are several exhibits that I'd like to introduce
15 for the shorter witness's testimony that I anticipate the
16 second witness will authenticate as business records. So what
17 I'd like to do is introduce them subject to connection during
18 the first witness's testimony so we can get him on and off the
19 stand, and authenticate them as business records at the
20 beginning of the second witness's testimony. I wanted to flag
21 that for the Court.

22 THE COURT: That's fine.

23 MR. DiMASE: They're non-controversial. Bank of New
24 York Mellon records.

25 MR. DEVLIN-BROWN: That's fine.

JBF3SC03

Kroll - Recross

1 THE COURT: Okay.

2 MR. DiMASE: There may be other evidentiary objections
3 but I don't think authenticity is the issue.

4 MR. DEVLIN-BROWN: We can raise them.

5 (Continued on next page)

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JBF3SC03

Kroll - Recross

1 (In open court)

2 MR. DiMASE: Your Honor, the government calls
3 Jean-Pierre Saint Victor.

4 The government would offer a number of exhibits at
5 this point subject to connection.

6 THE COURT: Very well.

7 MR. DiMASE: Those exhibits are 504, 513, 517, 518,
8 519, 531, 532, 536, and 536-A.

9 THE COURT: Okay. They will be admitted subject to
10 connection.

11 (Government's Exhibit 504, 513, 517, 518 subject to
12 connection received in evidence)

13 (Government's Exhibit 519, 531, 532, 536, 536-A
14 subject to connection received in evidence)

15 MR. DiMASE: And the government is also offering at
16 this stage three other exhibits, Government Exhibits 1296, I'm
17 sorry. 1295, 1296 and 1297. Let me consult briefly with
18 counsel.

19 Your Honor, I'll offer those at their appropriate time
20 in the testimony and give defense counsel an opportunity at
21 that time to object.

22 THE COURT: Very well.

23 JEAN-PIERRE SAINT VICTOR,

24 called as a witness by the Government,

25 having been duly sworn, testified as follows:

JBF3SC03

Saint Victor - Direct

1 DIRECT EXAMINATION

2 BY MR. DiMASE:

3 Q. Mr. Saint Victor, where do you work?

4 A. I work for BNY Mellon.

5 Q. What is BNY Mellon?

6 A. Could you repeat the question again?

7 Q. What is BNY Mellon?

8 A. Bank of New York Mellon.

9 Q. Where is that located?

10 A. At 240 Greenwich Street in Manhattan.

11 Q. Is it fair to say the bank also has locations all over the
12 world?

13 A. Yes, the bank has locations all over the world.

14 Q. What's your current position at Bank of New York Mellon?

15 A. Right now I am a director responsible for the Caribbean
16 region.

17 Q. How long have you been in that position?

18 A. Well, I been in that position for the past 37 years.

19 (Continued on next page)

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JBF7SCO4

Saint Victor - direct

1 BY MR. DIMASE:

2 Q. In that particular position or just employed by Bank of New
3 York?

4 A. Employed by Bank of New York. In that particular position
5 25 years.

6 Q. So you have been employed by the bank for a total of 37
7 years?

8 A. 37 years.

9 Q. And you have been in your present position or equivalent
10 position for approximately 25 years?

11 A. 25 years.

12 Q. And what are your duties and responsibilities in your
13 current position?

14 A. I am responsible for the Caribbean region, which means that
15 I keep the existing relationship for banks in the Caribbean,
16 and I also try to expand the relationship of the bank in the
17 Caribbean. Also I try to bring all the banks in the Caribbean
18 prospects, as we call them, to sell them the services and
19 products of the Bank of New York.

20 Q. I will ask you to keep your voice up and use the
21 microphone. It's very hard to hear. You say you try to bring
22 them the products of Bank of New York Mellon and sell those
23 products to the customer banks?

24 A. Correct.

25 Q. And is it fair to say that the majority of your customers

JBF7SCO4

Saint Victor - direct

1 are actually banks?

2 A. 99 percent of the clients are banks.

3 Q. And so BNY Mellon customers are largely banks and financial
4 institutions.

5 A. Correct.

6 Q. Not individuals hoping to open a bank account?

7 A. No, I don't do private banking.

8 Q. Have you ever met a person named Mark Scott?

9 A. No.

10 Q. Have you ever spoken to him?

11 A. No.

12 Q. Now you mentioned that the region that you handle is the
13 Caribbean. Does the Cayman Islands fall within your portfolio
14 or geographic region?

15 A. Yes, it is.

16 Q. Are you familiar with a bank named DMS Bank & Trust?

17 A. Yes, I am.

18 Q. And where is that bank located?

19 A. The bank is located in Georgetown, Cayman Islands.

20 Q. And when did DMS Bank -- I will refer to it for short as
21 DMS Bank -- when did they first become a client of Bank of New
22 York Mellon approximately?

23 A. Approximately 15 years ago.

24 Q. Let me direct your attention to approximately January of
25 2017. Was there a compliance inquiry related to DMS Bank at

JBF7SCO4

Saint Victor - direct

1 around that time?

2 A. Yes.

3 Q. How did you learn about that compliance inquiry?

4 A. Under the internal procedures of BNY Mellon, the compliance
5 sector of BNY Mellon would send us an inquiry saying that we
6 would like you to forward this to your client for further
7 clarification.

8 Q. And so when you say forward to the client, you're referring
9 to DMS Bank?

10 A. DMS Bank.

11 Q. And so you were asked by the compliance department to send
12 certain questions to DMS Bank; is that correct?

13 A. Correct.

14 Q. Let me show you Government Exhibit 536, which has been
15 admitted subject to connection. And this can be published to
16 the jury as well. Let me go to page 4. Mr. Saint Victor, this
17 is an e-mail from Yenny Valentiner. Could you tell the jury
18 who that is.

19 A. Yenny Valentiner is one of my staff members responsible for
20 the customer services.

21 Q. And you are copied on this mail as well?

22 A. Correct.

23 Q. This is sent on January 12, 2017 to a person named Nanalie.
24 Nanalie Cover, DMS Bank & Trust Ltd. Who is Nanalie Cover?

25 A. Nanalie Cover at that time was the compliance officer for

JBF7SCO4

Saint Victor - direct

1 DMS.

2 Q. And she worked at DMA Bank in the Cayman Islands?

3 A. Correct.

4 Q. And could you read the e-mail.

5 A. "Good afternoon Nanalie and DMS compliance. We require
6 your support with this compliance request. Please assist in
7 answering the questions regarding the nature of the activity
8 related to the items attached in this e-mail. Please note that
9 compliance requires this information to be provided by January
10 28. Thank you for your usual support."

11 MR. GARVIN: Your Honor, may we have a brief side bar?

12 THE COURT: OK.

13 (Continued on next page)

JBF7SCO4

Saint Victor - direct

1 (At the side bar)

2 MR. GARVIN: It appears we have to object because it
3 seems like they're repeating what DMS said, so there is hearsay
4 contained in the business record documents. It's not the
5 hearsay of BNY -- because that's excepted by the business
6 record exception -- but they're now apparently going to be
7 reading what DMS said, and to the extent that it's hearsay
8 within hearsay, we object.

9 MR. DIMASE: Well, your Honor, this is the first time
10 that I've heard this, despite producing these exhibits weeks
11 ago. It was very clear what exhibits we would be admitting
12 through this witness, and these e-mails are part of them.

13 These are business records maintained by the bank that
14 contain correspondence back and forth with their client, which
15 is DMS Bank, and there is going to be evidence what they asked
16 DMS Bank and the answers that were provided in response to
17 those compliance questions that were made part of the
18 compliance inquiry that we expect this witness to testify
19 about.

20 So, it's our position that they are business records
21 and their contents fall within the business records exception
22 and that they should be admitted.

23 This seems like something that should have been
24 addressed earlier if there was a real concern about hearsay,
25 because there are a number of e-mails that are going to be

JBF7SCO4

Saint Victor - direct

1 admitted of this type back and forth between DMS Bank and BNY
2 Mellon.

3 THE COURT: I will accept they don't necessarily know
4 what exhibits you're going to use weeks advance of the trial,
5 but, in any event, it will be overruled without prejudice to
6 make the application after the other gentleman testifies.

7 MR. DEVLIN-BROWN: Can we just say same objection if
8 there are other hearsay documents, or does this cover sort of
9 the whole scope?

10 THE COURT: Just say same objection.

11 MR. DIMASE: Your Honor, and just to clarify one other
12 point for the record. Another basis for the admissibility of
13 these statements from DMS being made to BNY Mellon is to
14 explain the actions that BNY Mellon took in the course of its
15 compliance inquiry. It obtained this information, and then
16 there will be testimony about the ultimate decision that was
17 made and the actions that were taken by BNY Mellon; and without
18 understanding the responses that are provided, it's impossible
19 to understand the ultimate decision that's taken.

20 THE COURT: The objection is overruled without
21 prejudice.

22 (Continued on next page)

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JBF7SCO4

Saint Victor - direct

1 (In open court)

2 BY MR. DIMASE:

3 Q. Mr. Barile, please republish Exhibit 536. Could we
4 actually scroll down further.

5 Could you read the top of that page, please.

6 A. "BNY Mellon is unable to determine the business practices
7 of Fenero Equity Investments/Fenero Financial Switzerland/Apex
8 Fund Services UK Ltd. or the purpose of the wire transfer
9 activity for benefit to or by order of various entities and
10 individuals."

11 Q. And then is it fair to say that on this page there are a
12 number of transactions that are listed?

13 A. Correct.

14 Q. And there are six items involving Apex Fund Services for a
15 total of approximately 55 million euros?

16 A. Correct.

17 Q. And then there are four items involving Fenero Equity
18 Investments totaling \$30 million; is that right?

19 A. Correct, sir.

20 Q. And 12 items involving Fenero Equity Investments totaling
21 approximately 102 million euros?

22 A. Correct, sir.

23 Q. And 14 items related to Fenero Financial Switzerland
24 totaling approximately 127 million euros?

25 A. Correct, sir.

JBF7SCO4

Saint Victor - direct

1 Q. And if we continue scrolling down, could you read -- I
2 think we have already read the top paragraph here. It says:
3 "Request: KYC/due diligence/purpose of transactions involving
4 the above customer of DMS Bank Ltd. The following questions
5 may be used as a guide for discussion."

6 Would you read those questions.

7 A. "What is the nature of business of your customer? How long
8 has the customer maintained a relationship with your
9 institution? If the activity is business related, is the
10 business a sole proprietorship and who is the beneficial owner?
11 If the customer is a holding company, who are the beneficial
12 owners? What is the physical address of your customer? Are
13 you required to visit the customer as part of your KYC? What
14 is your understanding of the purpose of this transaction? Does
15 the customer's transactions appear to be reasonable and
16 consistent with your knowledge of the customer?

17 "If the transactions involve dollar trending multiple
18 fund transfers for the same dollar amount (\$9900 etcetera), is
19 the trending related to country's currency restrictions, tax or
20 commerce advantage? Please explain."

21 Q. Then it concludes "See attached sample transactions." Do
22 you see that?

23 A. Correct, sir.

24 Q. Can we look at Government Exhibit 536-A, which is in
25 evidence subject to connection. And is this the attachment

JBF7SCO4

Saint Victor - direct

1 that was referenced at the bottom of the page we just read?

2 A. Yes, sir.

3 Q. And does this show the same transactions that were actually
4 identified in the e-mail in a spreadsheet format?

5 A. Correct.

6 Q. Could we just go to the first one, the first tab, and then
7 scroll to the right. And so the Apex transactions that are the
8 focus of this inquiry involved Fenero Financial Switzerland; is
9 that right?

10 A. Correct, sir.

11 Q. And then also at the bottom there are other tabs which
12 reflect transfers involving Fenero Equity Investments USB,
13 Fenero Equity Investments euro, or EUR?

14 A. Yes.

15 Q. And then Fenero Financial Switzerland EUR, so euro
16 denominated transactions for that entity.

17 A. Correct.

18 Q. We can go back to 536 and scroll down. Scroll up again.
19 Page up. So, this e-mail, next up in the chain, if we can
20 highlight or make that bit larger, Mr. Barile.

21 That's a response from Ms. Cover to Yenny Valentiner?

22 A. Yes, sir.

23 Q. That was on January 13, 2017?

24 A. Correct.

25 Q. Were you copied on this e-mail as well?

JBF7SCO4

Saint Victor - direct

1 A. Yes.

2 Q. Can you read the response.

3 A. "Good morning Yenny. We confirm receipt of the below
4 request. Have a great day. Kind regards, Nanalie."

5 Q. OK, let's now take this down for a moment.

6 At this point, your Honor, the government -- well, can
7 we show Government Exhibit 1295 just to counsel and the court
8 and the witness. And can we go down.

9 MR. GARVIN: No objection.

10 MR. DIMASE: The government offers this exhibit into
11 evidence.

12 THE COURT: There being no objection, it is received.

13 (Government Exhibit 1295 received in evidence)

14 Q. Can we go down to the bottom e-mail. If we could include
15 the header.

16 Have you ever seen this e-mail before?

17 A. No, sir.

18 Q. It's an e-mail from n.cover@dmsbank.com.

19 A. Yes.

20 Q. It's sent to msscott@msicbvi.com, copying
21 drpike@msicbvi.com.

22 A. Yes.

23 Q. And it's dated February 1, 2017, correct?

24 A. Yes, correct.

25 Q. And its subject line is "Fenero - request for information."

JBF7SCO4

Saint Victor - direct

1 Let's go down to the text. Could you read the e-mail,
2 please.

3 A. "Good afternoon Mr. Scott, I appreciate the time taken,
4 yesterday, to discuss the Fenero entities. As promised, I have
5 a few questions which will require a response and/or
6 supplemental information:

7 "Number one, please could you confirm the relationship
8 with Barta Holdings and provide due diligence to support the
9 transaction to Cryptoreal in the attached spreadsheet, tab
10 labeled "Fenero Equity Investments-USD".

11 "Number two, please could you confirm the relationship
12 with International Marketing Services and provide due diligence
13 to support the transactions in the attached spread sheet, tab
14 labeled "Fenero Equity Investments EUR."

15 "Number three, please could you confirm the
16 relationship with MS International and provide due diligence to
17 support the transactions in the attached spreadsheet, tab
18 labeled "Fenero Equity Investments EUR."

19 "Number four, provide due diligence to support the
20 transactions in the attached spreadsheet under tab labeled
21 "Apex Fund Services." Who is B & N Consultants Ltd.?

22 "Mr. Pike has been copied as requested. Please do not
23 hesitate to contact me should you have further questions. Many
24 thanks. Kind regards, Nanalie."

25 Q. Thank you. Can we scroll up, Mr. Barile.

JBF7SCO4

Saint Victor - direct

1 So this is an e-mail from Ms. Cover to Mr. -- I'm
2 sorry -- from Mr. Scott to Nanalie Cover, copying David Pike.
3 Do you see that?

4 A. Yes, sir.

5 Q. It also copies a person named Colm O'Driscoll?

6 A. Mr. Colm O'Driscoll is managing director of DMS.

7 Q. DMS Bank?

8 A. DMS Bank.

9 Q. And this is dated February 1, 2017, and it's a response to
10 the e-mail below; is that right?

11 A. Correct.

12 Q. Could we just read that e-mail. Or could you just read
13 that e-mail, please.

14 A. "My team will start pulling together the pertinent
15 information. We will get back to you my the middle of next
16 week. Unfortunately, I am traveling and want to see the entire
17 packet before it goes out to you. I have not yet viewed the
18 attachments, but I hope some of the issues raised in your
19 e-mail, such as "describe your relationship with" is a bit more
20 defined.

21 >Your questions also vastly expanded from what we
22 discussed on our call. Let's please connect on a call on
23 Friday or Monday to talk about this further. I am a little
24 concerned about the scope of your inquiry and why it was
25 triggered.

JBF7SCO4

Saint Victor - direct

1 "If DMS has any concern about us suddenly, I recommend
2 that it pays its debt to us in full within the next few days
3 and we move our funds to one of our many other banking
4 partners."

5 Q. Thank you. Mr. Barile, you can take that exhibit down.
6 Could we now show Government Exhibit 1296 just to counsel and
7 the Court, please. And scroll down, please.

8 The government offers Government Exhibit 1296.

9 MR. GARVIN: No objection.

10 THE COURT: 1296 will be received.

11 (Government Exhibit 1296 received in evidence)

12 MR. DIMASE: Please publish that to the jury, Mr.
13 Barile.

14 Q. Going down to the bottom e-mail in this chain, is that the
15 same e-mail from Ms. Cover to Mr. Scott seeking information
16 about various transactions that we just read a moment ago?

17 A. Yes.

18 Q. And, to be clear, you have never seen this e-mail either,
19 correct?

20 A. No?

21 Q. Just focusing now on the middle e-mail, this is from
22 drpike@msicbvi.com to codriscoll@dmsbank.com, copying
23 msscott@msicbvi.com. Forward: Fenero request for information.
24 Dated February 1, 2017. Please read this e-mail for the jury.

25 A. "Colm, it appears we could really use your help here.

JBF7SCO4

Saint Victor - direct

1 Please read below and tell me what's going on. It is as if we
2 are starting over. Every entity and every transaction
3 supported by DMS has been vetted by Apex or you and Trinity
4 well into the onboarding process. This is very disturbing. I
5 would very much appreciate your intervention."

6 Q. Thank you. We can pull that back down. And go up to the
7 top e-mail. This is from Mr. Scott to Mr. Pike dated February
8 2, 2017, the same subject line. What did Mr. Pike write back
9 to Mr. Scott?

10 A. "very good".

11 Q. By the way, is Mr. O'Driscoll copied on this particular
12 e-mail?

13 A. No, I don't see it.

14 Q. Is anyone from DMS Bank copied on this particular e-mail?

15 A. No, I don't see that.

16 Q. Apologies. I meant to say, is this an e-mail from
17 Mr. Scott to Mr. Pike?

18 A. Yes, it is.

19 Q. And it was Mr. Scott who wrote "Very good." Is that right?

20 A. Could you pretrial your question again.

21 Q. It's Mr. Scott who wrote "very good" in that he was the
22 author the e-mail.

23 A. Apparently it's from Mr. Scott.

24 Q. All right. Let me now turn back to Government Exhibit 536.
25 Just focusing here on this top e-mail, this is from Ms. Cover

JBF7SCO4

Saint Victor - direct

1 to Yenny Valentiner.

2 A. Yes, sir.

3 Q. And are you copied on this e-mail as well?

4 A. Yes, I am.

5 Q. And let's scroll down to the content. Before we get to
6 this, let me go back to Government Exhibit 1297. Just show
7 that to the Court and the parties for now. You can take that
8 down for now.

9 Let's go back to Exhibit 536. What is the date on
10 this e-mail?

11 A. This is an e-mail from Nanalie Cover to --

12 Q. On what date?

13 A. On February 2, 2017.

14 Q. And that's after the two e-mails that we just reviewed
15 together?

16 A. Correct.

17 Q. And what is contained in this e-mail?

18 A. Well, these are the replies of DMS of the questions to them
19 regarding the inquiry.

20 Q. Could you please read this e-mail starting at the top.

21 A. "What is the nature of the client? Fenero Equity
22 Investments L.P. and Fenero Financial Switzerland (the client)
23 is the first of a series of \$100 million open-ended investment
24 funds located in the British Virgin Islands, focusing on
25 investments in the financial services industry in Europe. The

JBF7SCO4

Saint Victor - direct

1 client expects to continue to raise additional capital and
2 start a series of approved funds with the same parameters. Due
3 to its small investor base of wealthy families and middle
4 market companies and its narrow investment strategy, the client
5 requires limited staff which will be primarily located in
6 subsidiaries in Ireland and will rely in part on third-party
7 service providers in the areas of accounting, legal and
8 business due diligence to identify appropriate investment
9 opportunities, prior to activating its in-house teams to
10 further investigate and negotiate such opportunity.

11 "The primary objective of the client is to invest into
12 controlling positions of distressed companies in the financial
13 services industry, for example, trading platforms community
14 banks, debit card processors and issuers, and to improve, grow
15 and build great companies through equity and limited debt
16 financing."

17 Q. Let's scroll down to the next page. Can you continue
18 reading.

19 A. "The administrator of the client was Apex Fund Services
20 (UK) Ltd., a large global institution that retains a focus on
21 high client service levels delivered locally.

22 "The client is currently administered and managed by
23 MSS International Consultants LLC, which is ultimately owned by
24 Mark S. Scott, Esq., an international expert in mergers and
25 acquisitions, private equity and U.S. securities law. Mark

JBF7SCO4

Saint Victor - direct

1 Scott has confirmed to DMS Bank & Trust that the client is in
2 the negotiation stages of securing a new administrator, namely
3 Trinity Fund Administration Ltd.

4 "How long has the client maintained a relationship
5 with your institution? The client has been a customer since 16
6 of June 2016.

7 "If the activity is business related, is the business
8 a sole proprietorship or who is the beneficial owner? The
9 activity of the client is business related, and it is a hedge
10 fund vehicle, not a sole proprietorship. Mark S. Scott is the
11 beneficial owner of the investment manager. See attached."

12 Q. Keep going, please.

13 A. "If the client is a holding company, who are the beneficial
14 owners? Not applicable.

15 "Are you required to visit the client as part of your
16 KYC process? No, a site visit is not a requirement of the KYC
17 process. However, the Fenero Group is well known to the
18 executive management team of DMS, whom have met with Mark
19 Scott. In addition, members of the executive management team
20 have visite the Miami based office of Mr. Scott and met with
21 him on his various trips to the Cayman Islands. In keeping
22 with the relationship management aspect of the business, DMS
23 Bank has undertaken to reach out to clients on a monthly basis.
24 The latter was previously implemented with the Fenero Group.

25 "What is the physical address of the client? The

JBF7SCO4

Saint Victor - direct

1 registered office address of the fund is Ritter House, Wikhams
2 Case II, Road Town, Tortola British Virgin Islands.

3 "What is your understanding of the purpose of this
4 transaction? The transactions listed on the BNY spreadsheet
5 appear to be in accordance with the stated activity of the
6 client, in that it is a master feeder structure with payments
7 being made into other Fenero fund, a loan to a distressed
8 company and fee payments to the IM."

9 Q. OK. By the way, was there any mention at all of
10 International Marketing Strategies in that description that you
11 just provided?

12 A. No.

13 Q. Any description of Barta Holdings there?

14 A. No.

15 Q. Please continue.

16 A. "Does the customer's transaction appear to be reasonable
17 and consistent with your knowledge of the customer? Yes, the
18 transactions appear to be reasonable and consistent with DMS
19 Bank & Trust's knowledge of the client in volume and frequency.

20 "If the transaction(s) involve(s) dollar trending
21 (multiple funds transfers for the same dollar amounts (\$9900
22 etc.), is the trending related to country currency
23 restrictions, tax or commerce advantage?

24 "Please explain.

25 "Not applicable."

JBF7SCO4

Saint Victor - direct

1 Q. In addition to the Barta and International Marketing
2 Services was there any reference to B & N Consulting in this
3 response?

4 A. No.

5 Q. So it ends "Please do not hesitate to contact me should you
6 have further questions." Do you see this e-mail?

7 A. Yes. Yes, that's right.

8 Q. And if you could scroll down to the bottom, Mr. Barile,
9 where the questions are again. And this -- I'm sorry. Just go
10 back. Let's move on now. Actually we can take this exhibit
11 down now.

12 What did you and Mr. Valentiner do with the
13 information that Ms. Cover provided in this e-mail?

14 A. Under the procedure, we take all the information that DMS
15 sent to us and we sent it to the compliance center of the bank.

16 Q. To be clear, in your role in the relationship area, do you
17 have any part in decisions made regarding anti-money laundering
18 or compliance issues?

19 A. No, I don't have any.

20 Q. You are simply tasked with going to the client banks and
21 obtaining information to give back to the compliance
22 department?

23 A. Yes.

24 Q. Among other responsibilities that you have; is that
25 correct?

JBF7SCO4

Saint Victor - direct

1 A. That's correct.

2 Q. Let me show you Government Exhibit 513. This is from Yenny
3 Valentiner to Nanalie Cover, copying you and other people,
4 dated February 3, 2017. Could you read the e-mail.

5 A. "High Nanalie. Good day. Thank you for providing this
6 information. I have forwarded the information to our FTSI
7 compliance unit who originated the request for them to update
8 their case. Have a nice weekend."

9 Q. So this is when you were describing communicating this
10 information to compliance. That's what's going on here?

11 A. Yes, sir.

12 Q. And after the exchange with DMS Bank, did you participate
13 in any meetings related to this compliance inquiry?

14 A. Yes, sir.

15 Q. Can I show you Government Exhibit 531 admitted subject to
16 connection -- as was 513 a moment ago. This is an e-mail from
17 John Gurtowski to you copying other people on February 10,
18 2017?

19 A. Yes, sir.

20 Q. And it says "AMLOC action required Re: Fenero Equity
21 Investments L.P., Fenero Financial Switzerland L.P. and Apex
22 Fund Services UK Ltd. with DMS Bank & Trust."

23 A. Yes, sir.

24 Q. And AMLOC, is that a committee that overseas anti-money
25 laundering compliance at the bank?

JBF7SCO4

Saint Victor - direct

1 A. It's Anti-money Laundering Committee, AMLOC.

2 Q. Can we scroll down. And could you read this e-mail.

3 A. "JP, in accordance with the recommendation made at
4 pre-AMLOC on January 17, 2017, please note the committee
5 requires your attendance at an upcoming pre-AMLOC to discuss
6 the relationship involving Fenero Equity Investments L.P.,
7 Fenero Financial Switzerland L.P. and Apex Fund Services UK
8 Ltd. with DMS Bank & Trust Ltd. (Georgetown, Cayman Islands)
9 2540459710 through BNY Mellon. Please note that the attached
10 documents are classified as "highly confidential" and should
11 not be shared with the customer."

12 Q. Did you in fact attend -- withdrawn. Pre-AMLOC, is that
13 another committee that meets in advance of the larger AMLOC
14 committee?

15 A. Correct, sir.

16 Q. Did you in fact attend a meeting on February 27, 2017?

17 A. Yes, I did.

18 Q. Let me ask you to look at Government Exhibit 532, admitted
19 subject to connection. And this is e-mail from you to Dino
20 Sani?

21 A. Dino Sani is my boss.

22 Q. And this is dated February 27, 2017, and it's titled
23 "Pre-AMLOC update." If you could go down to the body of the
24 e-mail. And, Mr. Barile, if you could just scroll up a little
25 bit.

JBF7SCO4

Saint Victor - direct

1 So this shows you can see there pre-AMLOC February 27,
2 2017?

3 A. Yes.

4 Q. And if you go down further here, number five, does that
5 show one of the items on the agenda for that meeting?

6 A. Correct.

7 Q. And your name is listed there?

8 A. Correct.

9 Q. Let's scroll up. All the way to the top, please. You
10 write "Did the call. We have to follow up with DMS. Will cc
11 both of you. JP."

12 When you said "did the call" what were you referring
13 to?

14 A. Well I went to the meeting scheduled February 27. It's by
15 call, so you call the number.

16 Q. The meeting you appeared at by phone.

17 A. Right.

18 Q. OK. And that's what you're referring to.

19 A. That's correct.

20 Q. And you said that you had to follow up with DMS?

21 A. Yes, that's what the committee decided to do, to ask for
22 more information about these transactions.

23 Q. Did you or someone else from your department follow up with
24 DMS after this meeting?

25 A. Could you repeat the question?

JBF7SCO4

Saint Victor - direct

1 Q. Did you or somebody else from your department follow up
2 with DMS after this meeting?

3 A. Yes, we did.

4 Q. Let me show you Exhibit 517, admitted subject to
5 connection. And if we could scroll down to the bottom. So,
6 this is an e-mail dated March 6, 2017 from Nanalie Cover to
7 you, copying Colm O'Driscoll, subject Fenero. Do you see that?

8 A. Yes.

9 Q. OK. And it says, "Good morning JP." By the way, JP stands
10 for John Pierre?

11 A. Everybody calls me JP.

12 Q. It says, "Good morning JP. Thank you for taking time out
13 of your extremely busy schedule to discuss the BNY inquiry
14 relating to Fenero Equity Investments and Fenero Financial
15 Switzerland (Fenero Group).

16 Does this paragraph here refer to a phone call that
17 you had with Ms. Cover?

18 A. Yes, I called Ms. Cover to ask her for more information.

19 Q. Do you recall specifics, or do you recall just calling for
20 additional information?

21 A. I said I remember the call but I do not recall the
22 specifics of the call.

23 Q. But you remember calling to ask her for additional details?

24 A. Correct.

25 Q. Could you please read the next paragraph?

JBF7SCO4

Saint Victor - direct

1 A. "As discussed, the main subject of the BNY inquiry appears
2 to be International Marketing Services ("IMS") which subscribed
3 into the Fenero Equity Investments funds. DMS Bank & Trust
4 Ltd. ("DMS") has reviewed the details surrounding the
5 investments made by IMS into Fenero Equity Investments and can
6 confirm that it was a one-off investment made to facilitate the
7 purchase of a credit card company. DMS was not aware of IMS's
8 UBO, Dr. Ruja Ignatova, or any banking issues surrounding IMS
9 in other regions."

10 Q. OK. Could you continue reading the next paragraph.

11 A. "Colm O'Driscoll has spoken with Mark Scott, the UBO of the
12 Fenero group, and confirmed that the relationship with IMS was
13 a one-off transaction and that he was not aware of any issues
14 with IMS. Mr. Scott was also informed that DMS would not
15 facilitate any payment to or from IMS going forward, which
16 Mr. Scott acknowledged would not be an issue. Comb is also
17 happy to discuss this matter further with you. However, as is
18 customary, please do not hesitate to contact me if you have
19 further questions. Many thanks."

20 Q. What did you do with the information in this e-mail?

21 A. As usual, we forwarded it to BNY bank compliance center.

22 Q. Let me show you Government Exhibit 504 admitted subject to
23 connection: Could you just read the top e-mail there, which is
24 from you to the AMLOC desk on March 6, 2017, copying several
25 other people.

JBF7SCO4

Saint Victor - direct

1 A. Correct. It's an e-mail from myself to the AMLOC desk
2 dated March 6, 2017. And I copied Dino Sani my boss, Cristiane
3 Gomes and Virgilio Torres, who at that time was support staff.

4 Q. And D-i-n-o S-a-n-i?

5 A. Yes.

6 Q. And is it Cristiane Gomes with an S?

7 A. Yes.

8 Q. And Virgilio Torres.

9 A. Correct.

10 Q. What did you say in the e-mail?

11 A. "Good morning. As a follow to our discussion during
12 pre-AMLOC last Monday and as per request from the committee; we
13 reviewed and discussed this case with DMS Bank Cayman and
14 received the following feedback from customer this morning. We
15 have a call this morning at 11:30 a.m. Please distribute to
16 the other members of the committee. Thanks. JP."

17 Q. Did you in fact attend a meeting or call on March 6, 2017
18 related to this inquiry?

19 A. Yes, I did, sir.

20 Q. And were certain decisions made at that meeting regarding
21 how the inquiry would be resolved?

22 A. Yes, sir.

23 Q. So did the committee come to some decision during that
24 meeting?

25 A. Yes, sir.

JBF7SCO4

Saint Victor - direct

1 Q. Let me show you Government Exhibit 518 admitted subject to
2 connection. Now, Mr. Saint Victor, after the meeting were you
3 instructed to do anything by the committee?

4 A. Yes.

5 Q. What was that?

6 A. I was instructed to contact the client with the following
7 accommodation.

8 Q. So this e-mail is the subsequent contact you had with the
9 client after the meeting.

10 A. Correct.

11 Q. And it's from you to Nanalie Cover, copying Colm
12 O'Driscoll, dated March 7, 2017.

13 A. Correct.

14 Q. And the subject line: Fenero, presentation to BNY
15 compliance risk committee?

16 A. Correct.

17 THE COURT: Before we read anything, it's 12:45, so
18 let's take our second break. We will be back in 15 minutes.
19 Ladies and gentlemen, please do not discuss the case.

20 You may step down.

21 (Jury not present)

22 THE COURT: Any work for me?

23 MR. DIMASE: No.

24 THE COURT: OK. Don't be late.

25 (Recess)

JBF3SC05

Saint Victor - Direct

1 (In open court)

2 THE COURT: We're going to get started, and then when
3 the food gets here, we'll take another brief break.

4 (Jury present)

5 THE COURT: Ladies and gentlemen, I do apologize. We
6 are going to take another brief break when things get set up.
7 But rather than sit around, I thought we'd get some work done.
8 Mr. DiMase.

9 MR. DiMASE: Thank you, Judge. Could we publish
10 Exhibit 504 admitted subject to connection. I apologize. 518.
11 Q. Mr. Saint Victor, prior to the break you were testifying
12 that committee came to a decision on March 6 of 2017?

13 A. Yes, sir.

14 Q. You were directed to communicate information back to DMS
15 Bank at that point?

16 A. Yes, sir.

17 Q. This is an e-mail from you to folks at DMS Bank on March 7,
18 2017?

19 A. Correct, sir.

20 Q. Could you please read your e-mail for the jury.

21 A. "Good day Nanalie and Colm. Thank you for the following
22 information. As I told you, I went to BNY Mellon international
23 risk committee yesterday morning at 11:30 a.m. to review and
24 discuss the Fenero case. After I submitted your letter and my
25 presentation, the committee took the following decision.

JBF3SC05

Saint Victor - Direct

1 "Number one. The committee members are not
2 comfortable with payments/transactions coming from or going to
3 International Marketing Services, One Top Team, OneCoin,
4 OneCoin cash account and Mr. Ruja Ignatova.

5 "Number two. The committee feels that Fenero and its
6 administrator/management should have done more researches on
7 international marketing services and the other companies as
8 public information is widely available on various actions by
9 the authorities in the U.K., Italy, Belgium, and Germany
10 concerning these entities.

11 "Number three. As a result, BNY Mellon compliance and
12 surveillance division starting this week, will insert all these
13 names in its filters and review after 90 days to confirm that
14 Fenero will no longer receive or send transactions/payment on
15 their behalf.

16 "As per your letter, I confirm to them it was one time
17 transactions and DMS and Fenero will no longer have anymore
18 transactions.

19 "Number four. All DMS accounts are part of the
20 filters in New York, London and Frankfurt.

21 "Number five. The committee will call upon me again
22 to review in 90 days."

23 MR. DiMASE: Thank you. No further questions.

24 THE COURT: Cross-examination?

25 MR. GARVIN: Yes. Thank you.

JBF3SC05

Saint Victor - Cross

1 CROSS-EXAMINATION

2 BY MR. GARVIN:

3 Q. Good afternoon, Mr. Saint Victor.

4 A. Good afternoon, sir.

5 Q. Good afternoon, sir.

6 MR. GARVIN: Mr. Barile, can you please put back up
7 the last exhibit, which was 518, sir. And highlight the very
8 top, please, who it is to and who it is from.

9 Q. Sir, I'm looking at the last e-mail that you spoke about
10 only a few moments ago. And we have highlighted the portion
11 where it shows who sent the e-mail and who it was sent to. Do
12 you see that?

13 A. Yes, sir.

14 Q. Of course, it states that it was prepared by you or at
15 least sent by you; is that correct, sir?

16 A. Correct, sir.

17 Q. And it is sent to Nanalie Cover, and we know that she is a
18 member of DMS Bank & Trust. Correct?

19 A. Correct, sir.

20 Q. And DMS Bank & Trust has a relationship with BNY Mellon,
21 correct?

22 A. Correct, sir.

23 Q. And we also see that there was a carbon copy sent to Colm
24 O'Driscoll, and he also is a member of DMS Bank & Trust. Is
25 that correct, sir?

JBF3SC05

Saint Victor - Cross

1 A. Correct, sir.

2 Q. If we could go down just a little bit to see the date.

3 Thank you, Mr. Barile. We see that this took place on March 7,
4 2017. Correct, sir?

5 A. Correct, sir.

6 Q. And the document itself does not appear to have been sent
7 to Apex; is that correct?

8 A. Correct, sir.

9 Q. And it does not appear to have been sent directly to
10 Fenero, even though Fenero is listed in the subject line.
11 Correct?

12 A. Correct, sir.

13 Q. Prior to coming here today, have you ever met Mr. Mark
14 Scott?

15 A. Never.

16 MR. GARVIN: Mark, would you please stand up.

17 Q. Would you recognize Mr. Scott if perhaps you had --

18 A. No.

19 Q. Never had any communication with Mr. Scott in any way
20 whatsoever. Would that be fair to say? Correct?

21 A. Correct.

22 Q. Okay.

23 MR. GARVIN: Mr. Barile, if you would be kind enough
24 to place on the board 536-A which is a spreadsheet. And could
25 we go to -- well, we'll start here.

JBF3SC05

Saint Victor - Cross

1 Q. I believe this is tab A. And sir, I direct your attention
2 if I could to column B. And do you see the dates that are
3 written there?

4 A. Yes, sir.

5 Q. Would it be fair to say that the earliest date is a
6 transaction for \$30 million which is by far the largest amount
7 of the transactions listed on this page?

8 A. Correct, sir.

9 Q. And would it also be accurate to say that that occurred on
10 or about July 13, 2016?

11 A. Yes, sir.

12 Q. Now, I want you to please use your memory when we were
13 talking just a few seconds ago about the prior exhibit, the
14 dates were in March of 2017; isn't that correct?

15 A. Correct, sir.

16 Q. So, approximately nine months had passed since this
17 transaction had taken place, right?

18 A. Yes, sir.

19 Q. And this particular amount, which is approximately \$30
20 million, I'm looking at the debit amount column which is column
21 D, you do see the rounded \$30 million, correct, sir?

22 A. Correct, sir.

23 Q. This transaction was a transaction that Apex gave authority
24 to transfer; isn't that correct?

25 MR. DiMASE: Objection. Personal knowledge.

JBF3SC05

Saint Victor - Cross

1 THE COURT: Overruled. If he knows.

2 A. Could you repeat the question again?

3 Q. Yes. This \$30 million transfer was a transfer that Apex
4 authorized. Is that correct?

5 A. Okay, sir, I don't know. Because if it is a transaction
6 authorized by Apex, it is between Apex and DMS.

7 Q. It's between Apex and DMS?

8 A. Most probably.

9 Q. Okay. And that leads to the position that, apparently,
10 that BNY Mellon would have been the correspondent bank; is that
11 correct?

12 A. Correct, sir.

13 Q. So, if it was a transaction between Apex and DMS, then one
14 would anticipate that Apex would have to authorize it, because
15 they would be the authorized signatory, correct?

16 MR. DiMASE: Objection. Calls for speculation, your
17 Honor.

18 THE COURT: Sustained.

19 MR. GARVIN: May we go to tab A, please.

20 Q. I'm also showing you what is in tab A, and I would direct
21 your attention, sir, to the date. And would it be accurate to
22 say that each and every one of these transactions occurred in
23 2016?

24 A. Yes, sir.

25 Q. And in fact, they each occurred in September of 2016,

JBF3SC05

Saint Victor - Cross

1 correct?

2 A. Yes, sir.

3 Q. I'm asking if you could direct your attention to the debit
4 currency column which is in column F. And do you see the
5 abbreviation EUR?

6 A. Yes, sir.

7 Q. Would it be accurate to state that that is an abbreviation
8 that the type of currency in that for that transaction is a
9 euro?

10 A. Yes, sir.

11 Q. Would it also be fair to say that if this transaction was
12 taking place outside of the United States, while it would be
13 BNY could be used as a correspondent bank, it is likely it
14 would go through one of the BNY offices outside of the United
15 States, because it deals with euros. Is that accurate?

16 A. No, sir. I mean this transaction happened with the DMS
17 account in the Frankfurt office of BNY.

18 Q. So that's why I said it might not be the United States.
19 This particular one was the Frankfurt office?

20 A. Of BNY Mellon.

21 Q. When we say that, for the ladies and gentlemen, we're
22 talking about Frankfurt, Germany, correct?

23 A. Correct, sir.

24 Q. Would it be fair to say that any time the ladies and
25 gentlemen of the jury see EUR on this particular schedule, that

JBF3SC05

Saint Victor - Cross

1 it was likely processed in the Frankfurt, Germany office?

2 A. Correct.

3 Q. Okay. Could we please look at tab B. I guess it's the
4 Fenero Equity Investments -- yes. Thank you. So I am showing
5 you now the Fenero Equity Investments -- no, we did this one
6 already. Can we please see the Fenero Equity Investments --
7 that one. Okay.

8 So, these transactions on this page are also in 2016;
9 is that correct?

10 A. Correct, sir.

11 Q. And that the earliest one appears to be July 7 of 2016?

12 A. Correct, sir.

13 Q. And the latest one appears to be October 18?

14 A. Yes, sir.

15 Q. For 400,000 euros, correct?

16 A. Yes, sir.

17 Q. If we can please take that down. Now, sir, sitting here
18 today, do you have any information that the Fenero transactions
19 that occurred in 2016, that any of those Fenero transactions
20 took place after your letter of March of 2017?

21 A. No, I don't have any information.

22 Q. Do you have any independent knowledge of whether Fenero in
23 2017 returned all of the funds that it had in its accounts and
24 closed them?

25 A. I don't have any information.

JBF3SC05

Saint Victor - Cross

1 MR. GARVIN: Would you be kind enough to put 1297 back
2 on the screen, please. And I think we need to start, because
3 this is a long one, I believe it's there is three pages to it.
4 Is that correct?

5 Your Honor, we would move 1297 into evidence.

6 THE COURT: Any objection?

7 MR. DiMASE: Yes, your Honor.

8 THE COURT: There is an objection?

9 MR. DiMASE: There is an objection, yes.

10 THE COURT: What's the objection?

11 MR. DiMASE: Hearsay, your Honor.

12 THE COURT: Sustained.

13 MR. GARVIN: Your Honor, may I have one moment?

14 THE COURT: Yes.

15 MR. GARVIN: May we have a brief sidebar on this one
16 exhibit?

17 THE COURT: Sure.

18 (Continued on next page)

JBF3SC05

Saint Victor - Cross

1 (At the sidebar)

2 MR. GARVIN: Your Honor, I was under the impression
3 that this was offered in as an exhibit by the government
4 subject to connection. I distinctly remember the language of
5 this being read during direct. Maybe it was another, because
6 it is an e-mail string, maybe it was another exhibit number.
7 But it had the same contents, both, but perhaps save one
8 response in the e-mail.

9 And so, my argument is, the portion of the e-mail that
10 may have been objectionable is contained in an exhibit that the
11 government offered. The one sentence that is Colm O'Driscoll's
12 response, which he tells Mr. Scott "disregard," that's the
13 essence of the statement. "Disregard" is the part that I now
14 want to put in to offset what the government, the portion the
15 government read, which because it was an e-mail string, had a
16 different exhibit number. And I think that under those
17 circumstances, it should be permitted. The word "disregard" is
18 not, has no meaning, other than to explain Mr. Scott's state of
19 mind as to why he did nothing.

20 MR. DiMASE: Your Honor, it isn't something we
21 offered. We did not offer the top two e-mails of this chain,
22 and we would argue that it's inadmissible hearsay.

23 MR. DEVLIN-BROWN: Was the exhibit though offered into
24 evidence subject to connection?

25 MR. DiMASE: No. This particular exhibit was not.

JBF3SC05

Saint Victor - Cross

1 The top two e-mails are not in evidence.

2 MR. GARVIN: This particular exhibit has a string of
3 e-mails of which the government put in an exhibit with a
4 different number that had some of the e-mails in. But, the one
5 e-mail that we want to put in is the response that says, by
6 Colm O'Driscoll, which that says "disregard."

7 We do not believe that response is hearsay, to begin
8 with. But even if it is hearsay, the government presented that
9 these were business records, and it is attached to the same
10 e-mail string.

11 THE COURT: Mr. DiMase, what's the relevance of the
12 direction to disregard?

13 MR. DiMASE: Well, there is an e-mail -- in the e-mail
14 that was admitted, there are a series of questions from this
15 Cover, the compliance person at DMS Bank, to which Mr. Scott
16 sends an e-mail back to Colm O'Driscoll saying, what's going on
17 here, why all these questions; something of that nature. And
18 then the e-mail that we introduced, we introduced that chain
19 and then another e-mail -- let me back up.

20 It is Mr. Pike who sends the e-mail saying what's this
21 all about, why all the questions. And then Mr. Scott responds
22 at the top good work or nice job or something to that effect.

23 THE COURT: To Mr. Pike.

24 MR. DiMASE: Just between the two of them. It doesn't
25 copy anybody at the bank. We did not admit the two additional

JBF3SC05

Saint Victor - Cross

1 e-mails with Mr. O'Driscoll thereafter where Mr. O'Driscoll
2 says something to the effect of, no, don't worry about this, or
3 disregard it. And then let's have a call. And Mr. Scott says
4 I'm flexible on Friday or something to that effect. That's the
5 top of the e-mail chain.

6 THE COURT: The objection will be sustained.

7 (Continued on next page)

JBF3SC05

Saint Victor - Cross

1 (In open court)

2 BY MR. GARVIN:

3 Q. Sir, to your knowledge, would it be accurate to state that
4 Fenero Equity Fund did not have any accounts at BNY Mellon?

5 A. To my knowledge, no.

6 Q. And to your knowledge, it would also be accurate to say
7 that Mark Scott, the individual, did not have the any accounts
8 at BNY Mellon?

9 A. To my knowledge, no.

10 Q. And for that matter, whether he had an account, there is no
11 record that he had any communication with BNY Mellon concerning
12 this topic that we're discussing; isn't that true?

13 A. That's true. I don't have any -- any idea.

14 Q. In preparation of your testimony today, you did review some
15 of the records to refresh your memory, right?

16 A. Correct.

17 Q. And would it be accurate to say that during that process of
18 reviewing the BNY Mellon records, you did not see any document
19 that purported that Mr. Scott communicated with anybody at BNY
20 Mellon regarding this topic; isn't that true?

21 A. That's true.

22 Q. Would it also be fair to say that Mr. Scott, neither
23 Mr. Scott nor the Fenero Equity Funds had any contact that
24 affected the decision of BNY Mellon to process these
25 transactions?

JBF3SC05

Wildner - Direct

1 MR. DiMASE: Objection.

2 THE COURT: Sustained.

3 Q. Do you know if Mr. Scott ever contacted anybody at BNY
4 Mellon to make or complete any transaction?

5 A. I do not.

6 MR. GARVIN: I have no further questions. Thank you.

7 THE COURT: Any redirect?

8 MR. DiMASE: No, your Honor.

9 THE COURT: Sir, you may step down.

10 THE WITNESS: Thank you, sir.

11 (Witness excused)

12 THE COURT: Ladies and gentlemen, I did receive the
13 message from Ms. Rivera that you voted. So I'll abide by the
14 will of the people and we will carry on.

15 Government, please call your next witness.

16 MR. DiMASE: Yes, your Honor. The government calls
17 David Wildner.

18 THE COURT: Mr. DiMase.

19 DAVID WILDNER,

20 called as a witness by the Government,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. DiMASE:

24 Q. Mr. Wildner, where do you work?

25 A. For the Bank of New York Mellon.

JBF3SC05

Wildner - Direct

1 Q. What's your current position there?

2 A. I'm the U.S. head of anti-money laundering and
3 counterterrorist financing.

4 Q. Is that a position that has global reach?

5 A. In many ways, yes.

6 Q. What are your duties and responsibilities in that role?

7 A. I have overall responsibility for implementing and carrying
8 out the anti-money laundering and counterterrorist financing
9 program within the bank within the U.S. legal entities that we
10 own, as well as other legal entities that process U.S. dollar
11 activity.

12 Q. Let me just pause for a minute to ask you a couple of
13 questions about Mark Scott. Do you know a person named Mark
14 Scott?

15 A. No, I do not.

16 Q. Have you ever spoken to Mr. Scott, the defendant in this
17 case, before?

18 A. No.

19 Q. Let's talk for a moment about Bank of New York Mellon.
20 What kind of bank is the Bank of New York Mellon?

21 A. It is an institutional bank. It serves other banks,
22 financial companies, financial service industries, governments,
23 foreign governments, U.S. government, states, counties,
24 municipalities, Fortune 500 companies. Non-retail in nature.

25 Q. Institutional bank to be distinguished from a retail bank?

JBF3SC05

Wildner - Direct

1 A. Correct.

2 Q. What's the difference, basically?

3 A. We have very, very few human beings as direct clients.

4 Most of our -- almost all of our clients are companies or banks
5 or financial services providers.

6 Q. So I couldn't just walk into a Bank of New York Mellon
7 office and open an account for myself?

8 A. No, you could not.

9 Q. Generally speaking -- actually withdrawn.

10 Where is Bank of New York Mellon's headquarters?

11 A. 240 Greenwich Street, Manhattan, New York County, New York.

12 Q. Does Bank of New York Mellon operate in other countries
13 around the world?

14 A. We operate around the world in many countries. We have
15 branches, representative offices, we own banks, companies,
16 brokerage firms.

17 Q. Is there a bank branch of Bank of New York Mellon located
18 in Frankfurt, Germany?

19 A. There is a branch of our New York State chartered bank in
20 Frankfurt, Germany, yes.

21 Q. Is that branch a separate entity or are its operations
22 ultimately controlled from the New York headquarters?

23 A. It's not a separate entity. It is controlled from the New
24 York headquarters.

25 Q. Are you familiar with the term roll up into the

JBF3SC05

Wildner - Direct

1 headquarters?

2 A. Yes.

3 Q. Could you explain what that means as far as the Frankfurt
4 branch and the New York headquarters?

5 A. So, the New York bank, the institutional bank, as I
6 mentioned earlier, is a New York State chartered bank. We're
7 subject to the oversight of the New York State Department of
8 Finance, and the Federal Reserve Bank of New York.

9 One of the things that we do is we have branches of
10 our institutional bank outside of the United States, which we
11 are allowed to do by law. We have them in a number of places:
12 Frankfurt, London, Brussels, Tokyo, Milan, Paris. And those
13 branches roll up, they are under the charter of the New York
14 bank. The institutional bank.

15 Q. Are their finances effectively part of the finances of the
16 institutional bank headquarters in New York?

17 A. Yes, they are covered under the financial statements of the
18 bank in New York.

19 Q. Is Bank of New York Mellon here in the United States FDIC
20 insured?

21 A. Yes it is.

22 Q. Is the institutional bank that you've described during your
23 testimony just now FDIC insured?

24 A. The institutional bank in the United States is FDIC
25 insured, yes.

JBF3SC05

Wildner - Direct

1 Q. Just to be clear, are the foreign deposits in foreign
2 branches of the bank, those deposits themselves insured by
3 FDIC?

4 A. No.

5 Q. But U.S. dollars that are held in the United States by the
6 bank would be insured by FDIC?

7 A. That's correct.

8 Q. Let me just ask you, based on your -- how long have you
9 been working in the banking industry now?

10 A. Since December of 2004.

11 Q. Is it fair to say you've worked in a number of positions at
12 a number of different banking institutions during that time?

13 A. Yes.

14 Q. Are you familiar with other banking institutions here in
15 the United States and whether or not those institutions are
16 also covered by FDIC insurance?

17 A. Yes.

18 Q. Do you know whether or not JPMorgan Chase here in the
19 United States is FDIC insured?

20 A. Yes, because I have my bank account there.

21 Q. Is HSBC Bank here in the United States FDIC insured?

22 A. Yes.

23 Q. Is TD Bank here in the United States FDIC insured?

24 A. Yes.

25 Q. Is Northern Trust Bank here in the United States also FDIC

JBF3SC05

Wildner - Direct

1 insured?

2 A. Yes.

3 Q. Let me ask you about the term AML. That stands for
4 anti-money laundering, correct?

5 A. That's correct.

6 Q. Where are Bank of New York Mellon's AML compliance
7 departments located for the institutional bank?

8 A. Predominantly here in New York, at 240 Greenwich Street.

9 Q. Where are the ultimate decisions made regarding AML and
10 compliance matters for the institutional bank?

11 A. Here in New York at 240 Greenwich Street.

12 Q. Let's talk for a moment about correspondent banking. Can
13 you describe for the jury briefly what that means.

14 A. Sure. Correspondent banking is essentially the provision
15 of banking services by one bank to another, so that that second
16 bank's customers can engage in trade in whatever currency is
17 called for. In many cases, it's the U.S. dollar. U.S. dollars
18 is used largely for business and economic transactions around
19 the world. It is a stable currency, but other currencies that
20 are typical in the correspondent banking space are the British
21 pound, the euro, the Japanese yen, and the Swiss franc.

22 Q. Let me show you what's been marked for identification as
23 Government Exhibit 515. And this is just for the witness, not
24 the jury at this point.

25 Is this a chart that lays out how some correspondent

JBF3SC05

Wildner - Direct

1 banking transactions work?

2 A. In a very simple way, yes.

3 MR. DiMASE: The government offers Exhibit 515 as a
4 demonstrative exhibit.

5 MR. GARVIN: No objection.

6 THE COURT: It will be received.

7 (Government's Exhibit 515 received in evidence)

8 MR. DiMASE: Please publish it for the jury.

9 Q. Can you, using this chart, explain how the correspondent
10 banks would participate in this sort of transaction depicted in
11 the Exhibit 515.

12 A. Certainly. So, if you use the example I mentioned earlier
13 of global trade and economic business, if somebody was buying a
14 commodity or a piece of machinery, they would be the payer.
15 So, they need to pay the manufacturer who in this chart would
16 be the payee.

17 The payer and the payee might not have the same bank,
18 they might not even be located in the same country. So the
19 payer would direct their bank, the payee's bank, to go into the
20 payment system, and enter a payment order that says pay the
21 manufacturer who is the payee X amount of money in either
22 dollars or euros. That payer's bank would send the payment
23 instruction to one of the correspondent banks that they hold an
24 account with. If it is a dollar payment, for example, they may
25 have three or four different banks that they hold dollar

JBF3SC05

Wildner - Direct

1 accounts with. They would send that instruction to them.

2 Correspondent bank in this chart here, correspondent bank A
3 would then determine if they hold an account for the payee's
4 bank. They may or they may not. If they do, they may make
5 payment themselves to the payee's bank, and tell them to pay
6 the actual manufacturer at that point in this example.

7 But if they don't, they would find out what
8 correspondent bank holds an account for that payee's bank, and
9 make the payment to that correspondent bank, and tell them you
10 need to pay your client's bank, the payee bank, so they can pay
11 their client.

12 So it's -- they're all links in a chain.

13 Q. So, let me just go over one example. If the payer, the
14 payer's bank and the payee's bank are both in jurisdictions
15 where dollars are generally not utilized. Could the payer's
16 bank and the payee's bank each have U.S. dollar correspondent
17 accounts with the two correspondent banks in the middle?

18 A. Correct.

19 Q. In that case, the payer's bank would instruct its U.S.
20 dollar correspondent bank to move money from its correspondent
21 account to the U.S. dollar correspondent account at the second
22 bank, which is held by the payee's bank at that correspondent
23 bank. Is that fair to say?

24 A. Not entirely correct.

25 Q. Go ahead. Why don't you please correct me.

JBF3SC05

Wildner - Direct

1 A. Because, it's very infrequent that the payer's bank tells
2 the correspondent to pay the -- which correspondent to pay to
3 further the payment. It's usually up to the correspond -- in
4 this example, it would be up to correspondent bank A to
5 determine which bank is going to be correspondent bank B.
6 Because that payee's bank may hold a number of accounts. They
7 may hold -- for example, they may hold an account at JPMorgan
8 or Citi or the Bank of New York. And if correspondent bank A
9 can just select JPMorgan or tomorrow they may choose Citi or
10 they may choose the Bank of New York. So it is really
11 correspondent bank A making the decision over which
12 correspondent, if there are multiple. If there is only one,
13 then there is only one.

14 Q. In either case, it would send the dollars to the
15 correspondent account at correspondent bank B for further
16 payment to the payee's bank?

17 A. That's correct.

18 Q. How are the instructions about how the money should flow
19 communicated to the banks? You mentioned a payment message
20 earlier.

21 A. Predominantly through what's call a Swift messaging system.

22 Q. Can you describe for the jury what is the Swift messaging
23 or what is a Swift message?

24 A. Swift is an organization, international organization in
25 Belgium. It furthers the processing of financial transactions.

JBF3SC05

Wildner - Direct

1 That's its main purpose. The messaging system is a very secure
2 messaging system that has specific message types to address
3 specific types of transactions. And each one of those message
4 types has very specific fields to be used for individualized
5 particular pieces of information.

6 Q. In the most basic kind of wire transfer, what details would
7 need to be included in this Swift message regarding the
8 transfer?

9 A. The date of the transaction, the value of the transaction,
10 the currency of the transaction that's being conducted in, the
11 originator's name and the unique identifier, the originating
12 financial institution, the beneficiary's name or unique
13 identifier, an account number, the beneficiary bank's name.
14 And that's it.

15 Other information that could be in there, but that's
16 what has to be in there.

17 Q. Say that last --

18 A. There is other information that could be in the payment.
19 But that's the information that must be in the payment.

20 Q. Is there a field that can be filled out, but doesn't need
21 to be, regarding the details of the payment, the purpose of the
22 payment?

23 A. Sure. There is a bank to bank field. It says bank to
24 bank. It is an open text field.

25 Q. That message would help route the payment through the

JBF3SC05

Wildner - Direct

1 appropriate banks to get it to the beneficiary?

2 A. It could. Yes.

3 Q. Now, where does Bank of New York Mellon, generally
4 speaking, hold its U.S. dollar correspondent accounts?

5 A. In New York.

6 Q. Where does Bank of New York Mellon, generally speaking,
7 maintain its euro correspondent bank accounts?

8 A. I'm sorry. In Frankfurt or in London.

9 Q. Frankfurt, Germany or London, U.K.?

10 A. Yes.

11 Q. Are you familiar with a bank named DMS Bank & Trust?

12 A. I am.

13 Q. Say it again?

14 A. I am.

15 Q. Okay. And does that bank have a relationship with Bank of
16 New York Mellon?

17 A. Yes, it does.

18 Q. What kind of relationship?

19 A. It has a correspondent banking relationship, a U.S. dollar
20 relationship and I believe a euro relationship still as well.

21 Q. Where does it have its U.S. dollar correspondent bank
22 account with Bank of New York Mellon?

23 A. In New York.

24 Q. Where does it have its euro correspondent bank account with
25 BNY Mellon?

JBF3SC05

Wildner - Direct

1 A. At the institutional bank's branch in Frankfurt, Germany.

2 Q. Is there any way that Bank of New York Mellon distinguishes
3 among jurisdictions or clients for correspondent banking risk
4 purposes?

5 A. Yes.

6 Q. What do those categories reflect?

7 A. We do on an annual basis, or more frequently if necessary,
8 look at all of the jurisdictions around world and take into
9 account a number of data points for information. And we
10 categorize countries as either low, medium or high.

11 Q. Where is DMS Bank & Trust located?

12 A. It's in the medium to high range.

13 Q. Where is it located? In what jurisdiction?

14 A. Oh, I apologize. In the Cayman Islands.

15 Q. You said it is a medium to high risk jurisdiction?

16 A. That's correct.

17 Q. Back in 2016 and 2017, at that time, did DMS Bank also
18 maintain correspondent accounts for dollars in New York and
19 euros in Frankfurt?

20 A. Yes, it did.

21 Q. Let's turn to anti-money laundering and compliance programs
22 at BNY Mellon.

23 What infrastructure is there at BNY Mellon to handle
24 AML compliance?

25 A. So we have a large anti-money laundering compliance program

JBF3SC05

Wildner - Direct

1 staffed with approximately 115 to 120 people. We conduct a
2 number of -- we exercise a number of the requirements under the
3 Bank Secrecy Act directly, and advise and oversee our business
4 partners conducting other parts of it.

5 It includes somewhere around 75 or 80 people who do
6 live transaction screening for sanctions and economic sanctions
7 purposes. Another 75 to 80 people who conduct post-transaction
8 monitoring. We have another 15 or 20 people who provide advice
9 to our business partners on things like know your customer
10 information, and risk mitigation. And obviously this includes
11 some of the personnel of the staff at the business. I think
12 about another 85 or 92 actually conduct the reviews from a know
13 your customer perspective for our direct customers.

14 Q. We'll turn to some of those issues in a bit more detail in
15 a moment. Why does Bank of New York Mellon have this robust
16 anti-money laundering compliance infrastructure?

17 A. Well, there are a few reasons. One is we are required by
18 law. The Bank Secrecy Act requires that we take reasonable and
19 prudent steps to prevent, identify, and report potentially
20 suspicious or concerning activity. That's one reason.

21 The other reason is, to be very candid, is we have to
22 be concerned about our reputation as a financial institution.
23 We want to make sure that we're not being -- we are not
24 involved in something that's potentially illegal.

25 Q. You mentioned for a moment sanctions and the part of the

JBF3SC05

Wildner - Direct

1 AML infrastructure involving sanctions. Without going into too
2 much detail on that, can you briefly explain what you meant by
3 that.

4 A. Sure. There are various laws and regulations in place in
5 jurisdictions in the United States and around the world that
6 create what are called sanctions programs. Which would mean
7 that there are certain individuals or entities that banks in
8 the United States are prohibited from doing business with or
9 conducting transactions on behalf of. There are others that
10 the programs are more around types of activity that you can't
11 support.

12 And our responsibility is to, where appropriate,
13 reject payments that are involved in some of those activities,
14 or in other circumstances, seize the funds and hold them on
15 behalf of the government and notify the government that we've
16 done so.

17 Q. Are you familiar with the term "filter"?

18 A. Yes.

19 Q. In the context of Bank of New York Mellon's AML program,
20 what does filter mean?

21 A. So, the filter is a mechanism by which all of our
22 transactions are pushed through a filter. So every transaction
23 comes into a system, that system looks at all, every data field
24 in a message, and tries to determine whether or not that data
25 field would be indicative of a payment that we would be

JBF3SC05

Wildner - Direct

1 prohibited from processing. Either to reject it, or to embargo
2 it and hold it on the side for the government.

3 Q. Is that filter system something that's set up to work
4 automatically as the transactions come through?

5 A. Yes. So it stops them, stops them, and then a human being
6 actually reviews them to determine whether or not it was what
7 we call a true hit.

8 Q. That's in real time as the wire is passing into the bank?

9 A. That's correct, it would be, that's a tool for
10 interdiction.

11 Q. Does every single wire transfer that passes through Bank of
12 New York Mellon's correspondent banking accounts go through the
13 filter system?

14 A. Yes.

15 Q. You said that the filters review every field in the payment
16 message.

17 A. That's correct.

18 Q. So, I think you mentioned before, certain fields are
19 required, for example, the originating party, the beneficiary
20 party, the amount, things of that nature. Is all that
21 information reviewed?

22 A. That's all, that is all run through the filter, yes.

23 Q. Is information that is not required, but nonetheless
24 provided, for example, information in the bank to bank detail
25 section or wire purpose detail section, would that also be

JBF3SC05

Wildner - Direct

1 reviewed if information was provided there?

2 A. Yes.

3 Q. Outside of -- we've been talking about sanctions here for a
4 moment. Outside of officially sanctioned people and entities,
5 does Bank of New York Mellon ever add other parties, other
6 people or entities to its filter systems?

7 A. Yes, we do.

8 Q. Why is that?

9 A. If there are individuals or entities that we've identified
10 of concern, that we choose to not process payments for going
11 forward, we'll enter them into our filter so we can
12 automatically reject them.

13 Q. So your filter systems may include parties that go beyond
14 sanctioned entities and individuals?

15 A. That's correct.

16 Q. Do they in fact include individuals that is beyond the
17 sanctions?

18 A. They do.

19 Q. Let me now turn to the second area that I think you briefly
20 described. Post transaction monitoring. How does that differ
21 from the filter system that you've been testifying about?

22 A. So, post transaction monitoring by definition happens after
23 the transactions have already occurred. We, we typically look
24 at activity, week, month, or even in some cases six weeks later
25 to get a broader picture of transactional activity to look for

JBF3SC05

Wildner - Direct

1 patterns, to look for situations where there could be
2 aggregation of either a transactional volume or value, or we
3 can see flows from multiple individuals to one hub or one hub
4 that is sending out many spokes. We can look for patterns of
5 behavior regarding specific jurisdictions, if there are
6 jurisdictions concern. It gives us a much better way to look
7 over that larger set of data.

8 Q. What are some of the things that can lead the bank to
9 conduct post transaction monitoring on a particular transaction
10 or series of transactions?

11 A. Well, there is lots of things. There are red flag
12 indicators that are published in the -- in the federal exam
13 manual. Things like round dollar transactions, multiple
14 transactions between high-risk jurisdictions where there is no
15 underlying understanding of the nature of the business, there
16 could be transactions involving tax saving jurisdictions,
17 multiple transactions involving what are termed to be offshore
18 jurisdictions. There is, you know, as many ideas as your mind
19 can create.

20 Q. Outside of the red flags that might pop up regarding the
21 transactions themselves, are there other sorts of information
22 that might trigger a post transaction review at the bank?

23 A. That's correct. We will frequently get information, either
24 from the news media, from government sources, we can share in
25 certain situations where we're legally allowed to, we can share

JBF3SC05

Wildner - Direct

1 information or receive information from other U.S. financial
2 institutions that can be indicative of concerning activity.

3 Q. What information is reviewed during the post transaction
4 monitoring process in terms of the data and the payment
5 messages?

6 A. If we're looking at activity for an individual or an
7 entity, we're look at all of the activity that they've taken
8 part in and all of the information that's available. So, if
9 they've done -- if they have been involved in wire transfers as
10 well as automated clearing house payments to pay bills or be
11 paid, or if they've written checks that we've cleared maybe
12 through one of our other products for a correspondent bank or
13 that bank may have issued a check on their behalf, we'll look
14 at all of that.

15 Q. To be clear, particularly with respect to wire transfers,
16 would all of the information in a payment message be reviewed
17 and considered as part of the post transaction monitoring
18 process?

19 A. Yes, when we review that activity, we look at all of the
20 activity so we can take it into its totality.

21 Q. Would that include not only the originating party,
22 beneficial party, amount, but also any details provided by the
23 purpose of the wire transaction as well?

24 A. Yes, that's true.

25 Q. Who conducts the post transaction monitoring at Bank of New

JBF3SC05

Wildner - Direct

1 York Mellon?

2 A. We have a staff of, like I said, about 70 or 80 people,
3 many of them sit in or are employed near Syracuse. We also
4 have people who sit just outside of London. Some people we sit
5 in Frankfurt. And some of the people who sit in Tokyo and
6 Singapore.

7 Q. Are the people in New York as well, New York City?

8 A. Yes.

9 Q. Is that review conducted of just transactions passing
10 through the headquarters here in New York or for wires passing
11 to all of the institutional bank branches?

12 A. It's wires passing through all of the institutional bank.

13 Q. If suspicious activity is detected in the post transaction
14 monitoring context, what are the typical steps that might be
15 taken after some activity is first recognized?

16 A. Well, the analysts who are reviewing activity, they don't
17 determine whether something is suspicious or not. They
18 determine whether something is concerning or not. In that
19 process, if they have come to that conclusion that something is
20 concerning, we have a process within our organization where
21 they'll document in what's called an incident report, and
22 document their findings and the associated information and the
23 reference materials. That will then get forwarded to our
24 suspicious activity response team.

25 The investigators there will take that information,

JBF3SC05

Wildner - Direct

1 conduct a more larger, broader, deeper dive into the activity
2 and the parties associated, and make a determination whether or
3 not something is suspicious or not. And whether or not we have
4 any regulatory filing obligations.

5 Q. As part of that process, are there occasions on which the
6 bank would seek additional information or documentation from
7 its customer bank?

8 A. That's one of the investigative steps. We can't, if we
9 can't get an understanding of the activity on its face, we very
10 often go out to our correspondent bank, our client, and ask
11 them for information about their client, and particulars around
12 the transaction specifically.

13 Q. So not just going to the bank customer, such as DMS Bank,
14 but going further to the bank customer's customer? Is that
15 what you're saying?

16 A. Yes. Except we would only go to the bank. We would expect
17 the bank in this case, in your example DMS, to go to their
18 customer.

19 Q. Got it. What are some of the possible outcomes of post
20 transaction monitoring if suspicious activity is confirmed?

21 A. A number of things can happen. We can continue to monitor
22 it to see if it was an anomaly. We can make a determination
23 that we don't want to see anymore. And we can go to our client
24 bank and tell them that we don't want to see activity for that
25 party anymore through their account in our books.

JBF3SC05

Wildner - Direct

1 THE COURT: What does that mean, "see"?

2 THE WITNESS: We don't want them to transact for that
3 individual or entity through their account on our books.

4 Q. Okay.

5 A. Or --

6 Q. One was you can conduct further ongoing monitoring; two was
7 you could you go to your customer bank and tell them stop
8 transactions with these entities through our accounts. What
9 else could happen?

10 A. We could take the step of placing that individual or entity
11 on our filter to reject for AML compliance purposes. And if
12 the activity was or if there was a pattern of behavior amongst
13 a number of clients, we could have a discussion with our client
14 bank to potentially terminate our relationship with them.

15 Q. With the bank customer itself?

16 A. Yes.

17 Q. You said that that would happen if there was more of a
18 pattern of activity over time with that bank?

19 A. Yeah, that's a step that usually occurs, if it does occur,
20 is over a period of time. We will have significant discussions
21 with our clients compliance staff, AML staff, and potentially
22 their senior management to get a better understanding of why we
23 should be comfortable and what steps they're taking to mitigate
24 the risks that we think that we've identified.

25 Q. So it's fair to say that cutting off of the entire

JBF3SC05

Wildner - Direct

1 relationship with the bank is a more extreme step?

2 A. Yes.

3 Q. Mr. Wildner, in general, do all U.S. banks to your
4 knowledge operate more or less the same way, with respect to
5 their AML programs?

6 A. Generally I would say yes.

7 MR. DiMASE: One moment.

8 Q. Mr. Wildner, are there certain committees in place at Bank
9 of New York Mellon to oversee its AML compliance activities?

10 A. Yes. I chair the bank's anti-money laundering oversight
11 committee. And that committee has a number of subcommittees to
12 address specific geographies, certain business lines, and in
13 some cases, small parts of the AML program itself.

14 Q. Are there subcommittees -- I think you said subcommittees.
15 Is one of them pre-AMLOC committee?

16 A. Yes it is.

17 Q. Just very briefly can you tell what the pre-AMLOC committee
18 is?

19 A. Sure. AMLOC consists of the senior members of the senior
20 executives of the various business lines within our firm as
21 well as representatives from AML compliance and our legal team.
22 We meet biweekly and we receive a lot of information.

23 In order to make sure that the committee is actually
24 receiving the full picture, for lack of a better term, when
25 they meet biweekly, we have a subcommittee that meets weekly

JBF3SC05

Wildner - Direct

1 called pre-AMLOC. So things or situations are escalated to
2 pre-AMLOC. There is a group of six or seven of the voting
3 members who attend that meeting. We give direction back to
4 either AML compliance to take other steps to gather more
5 information, or we'll interview or direct our business partners
6 to go out and obtain additional information. Or we will
7 consult with our legal colleagues around any other requirements
8 that we may need to address, before we bring a topic to AMLOC
9 specifically.

10 Q. Which is the higher level --

11 A. That's correct.

12 Q. Let me now show you what's been marked for identification
13 as Government Exhibit 500.

14 MR. DiMASE: May I approach the witness, your Honor?

15 THE COURT: You may.

16 Q. Do you recognize that?

17 A. Yes, I do.

18 Q. What is it?

19 A. It is a CD that contains business records from the Bank of
20 New York Mellon.

21 Q. Does it also contain a copy of the demonstrative exhibit
22 showing the correspondent banking relationships?

23 A. It does.

24 Q. Were those records on the disc, aside from the
25 demonstrative exhibit, kept in the regular course of Bank of

JBF3SC05

Wildner - Direct

1 New York Mellon's business?

2 A. Yes, they are.

3 Q. Is it the standard practice of New York Mellon to make and
4 keep those records?

5 A. Yes.

6 (Continued on next page)

JBF7SCO6

Wildner - direct

1 BY MR. DIMASE:

2 Q. Was the information in the records recorded at around the
3 time the events or transactions described in the records took
4 place?

5 A. Yes.

6 Q. And was the person who kept these records under a business
7 duty to do so accurately.

8 A. Yes.

9 MR. DIMASE: Your Honor, the government offers Exhibit
10 500, along with its contents Exhibits 501, 502, 504, 506, 513,
11 515, 517, 537, along with 534-A and 536-A into evidence.

12 THE COURT: Any objection?

13 MR. GARVIN: No objection.

14 THE COURT: They will be received.

15 (Government Exhibit 500 received in evidence)

16 (Government Exhibits 501, 502, 504, 506, 513 received
17 in evidence)

18 (Government Exhibits 515, 517, 537, 534-A and 536-A
19 received in evidence)

20 Q. Directing your attention to approximately late December
21 2016, did you become aware of an AMLOC inquiry involving DMS
22 Bank at that time?

23 A. I did.

24 Q. How did the inquiry come to your attention?

25 A. It was during the course one of our pre-AMLOC meetings.

JBF7SCO6

Wildner - direct

1 Q. And what was the client or clients at DMS Bank associated
2 with that inquiry?

3 A. Fenero Equities, Fenero Investments.

4 Q. Several Fenero-related entities?

5 A. Yes.

6 Q. I'm going to show you Government Exhibit 526 in evidence:
7 This is an e-mail from Christopher Grasso to you and others
8 dated December 30, 2016?

9 A. That's correct.

10 Q. Is Mr. Grasso an employee of the bank in the compliance
11 area?

12 A. Yes.

13 Q. Let's just scroll down to the first page. Do you
14 recognize -- there is a redacted portion here. Do you
15 recognize what this document is?

16 A. Yes. It's a summary for the investigations that are being
17 presented to pre-AMLOC every Monday.

18 Q. Can we scroll to page 12 -- actually page 13 of the --
19 there we go. Can we zoom in on that portion.

20 And is this the portion of the memo addressing this
21 particular compliance inquiry?

22 A. Yes, it is.

23 Q. And could you read what it says under Internet.

24 A. "Internet - website located stating "possibly in an attempt
25 to avoid regulators and/or trip money laundering filters,

JBF7SCO6

Wildner - direct

1 OneCoin are banking under the inconspicuous account name

2 "International Marketing Services PTE. Ltd."

3 Q. And then it lists a website where that --

4 A. There is a URL, correct.

5 Q. Where that information is located?

6 A. Presumably, yes.

7 Q. And is doing public source research a common practice in
8 compliance work?

9 A. Yes.

10 Q. Let's go down to debits. And the first third -- the first
11 third, fourth and fifth bullet points beneath there, is it fair
12 to say those listed a number of wire transactions involving
13 Fenero?

14 A. Yes.

15 Q. You can see the first one, six wires for approximately 55
16 million involving Fenero Financial Switzerland?

17 A. That's correct.

18 Q. The third bullet point refers to seven wires totaling 35
19 million involving Fenero Equity Investments?

20 A. That's correct.

21 Q. And is this why Fenero was part of the inquiry that was
22 being conducted at this stage by BNY Mellon?

23 A. Yes.

24 Q. And at the bottom you see where it says "recommend"?

25 A. Yes.

JBF7SCO6

Wildner - direct

1 Q. What does it say there?

2 A. "Recommend: 3 month review to monitor."

3 Q. And were these entities discussed at one of these pre-AMLOC
4 meetings in early 2017?

5 A. Yes.

6 Q. Let me show you now Government Exhibit 527 in evidence.
7 This is from Kevin O'Neil to the AMLOC desk and other e-mail
8 addresses dated January 5, 2017. Mr. Wildner, would you have
9 had access to the AMLOC desk e-mail group?

10 A. Yes.

11 Q. Let's go down here. And at the bottom -- at the top here
12 it says "This matter is being referred by Matt Maggio.
13 Escalation - pre-AMLOC referral."

14 Was Matt Maggio another compliance employee at that
15 time at Bank of New York Mellon?

16 A. Yes, he was. Can I correct myself? Matt Maggio worked for
17 legal, and he was in our suspicious activity response team.

18 Q. Can you read the paragraph starting "incident report".

19 A. "Incident report number 622896 identifies 275 concerning
20 wires, totaling approximately \$222,000,467.62 (multiple euro
21 wires converted to USD), that involve International Marketing
22 Services Pte Ltd. The wires are concerning primarily because
23 internet research indicates International Marketing Services is
24 involved with OneCoin Ltd., a company that appears to be
25 operating a pyramid/Ponzi scheme.

JBF7SC06

Wildner - direct

1 Q. Can we go to page 3 of this document. And there is a
2 section here entitled. "Research". "Internet research provides
3 limited information on International Marketing Services." It
4 then references a website and says, "The website states that
5 the customers can send the cost of a package. When buying your
6 first package, please add the activation costs of 30 euros
7 whichever package you are buying." It also states that "under
8 subject of the bank payment please write only your user name.
9 No other description is needed. The website also advises that
10 customers should never contact the banks directly."

11 "A review of the website indicates that the website
12 reveals it encourages customers to sign up for education
13 packages on how to use OneCoin. The website describes OneCoin
14 as the future of cryptocurrency after Bitcoin and cites the
15 founder as Ruja Ignatova. The website states that OneCoin's
16 account comes into play when you start to get bonuses from the
17 investments made by the people under you. 60 percent of this
18 bonus goes to you cash account and 40 percent to your trading
19 account." And it goes on to describe some additional features.

20 If we can just scroll down to the next page. And just
21 at the top of the page above, Mr. Barile, where it says
22 "Internet research" in the bottom of the page above.

23 "Internet research revealed various websites and
24 articles alleging that OneCoin is an online Ponzi scheme." It
25 then references several websites.

JBF7SC06

Wildner - direct

1 And in the next paragraph, expand the next three
2 paragraphs.

3 Is it fair to say, Mr. Wildner, that these paragraphs
4 describe different government entities with OneCoin in one way
5 or another?

6 A. Yes.

7 Q. OK. Just go to the bottom where it says recommendation
8 section. And with respect to DMS Bank and number 3, it says
9 "Request KYC from DMS Bank & Trust regarding the aforementioned
10 transactions involving its client, Fenero Equity Investments,
11 L.P., Fenero Financial Switzerland L.P. and Apex Fund Services
12 UK Ltd."

13 A. That's correct.

14 Q. Were there subsequent pre-AMLOC and AMLOC meetings during
15 which these matters were discussed further by those committees?

16 A. Yes, there were.

17 Q. And as a result of those meetings, was any decision made
18 regarding outreach to DMS Bank?

19 A. Yes. We instructed our client-facing team relationship
20 manager to contact DMS and request customer information and
21 purpose of the transaction and information around the
22 transaction from DMS.

23 Q. In this situation who was asked to make that contact?

24 A. John-Pierre Saint Victor.

25 Q. And other people working in his department?

JBF7SCO6

Wildner - direct

1 A. Yes.

2 Q. And why did they reach out to DMS Bank rather than people
3 from the compliance department at Bank of New York Mellon?

4 A. The business people own the relationship, so that's why
5 their relationship managers talk to their clients.

6 Q. And is that the usual course that they do the
7 communication, not compliance people?

8 A. Yes, unless it's a relationship issue with the bank itself,
9 the relationship managers would always be the people who talk
10 to the client.

11 Q. Did Mr. Saint Victor or staff reach out to DMS Bank in this
12 matter.

13 A. Yes.

14 Q. And did DMS Bank respond with information regarding the
15 Fenero entities?

16 A. Yes.

17 Q. I'll show you Government Exhibit 537. And did you
18 eventually receive the information contained in this e-mail
19 dated February 3, 2017?

20 A. Yes.

21 Q. If we could just scroll down. And looking at the page in
22 front of you now, were these the responses from DMS Bank that
23 you and other compliance staff looking at this series of
24 transactions reviewed?

25 A. Yes.

JBF7SCO6

Wildner - direct

1 Q. Was the information provided in this response sufficient
2 for the pre-AMLOC committee to decide what the next steps were?

3 A. No.

4 Q. Did it resolve the concerns that Bank of New York Mellon
5 had?

6 A. No, it did not.

7 Q. Why not?

8 A. Well, there is a number of reasons, but primarily we asked
9 very specific questions about the purposes of the transactions,
10 and one of the answers is that it was a quote unquote one-off
11 transaction, and we had seen multiple transactions already.

12 Q. Well, I think you may be speaking about a later e-mail.
13 Why don't we just go down to the next page. I think as far as
14 this e-mail we can focus on 7, 8 and 9.

15 Was the information provided in response to these
16 three questions sufficient to address the concerns that the
17 pre-AMLOC committee had?

18 A. No, it was not.

19 Q. And why is that with respect to these particular answers?

20 A. Well, they answered the question: What is your
21 understanding of the purpose of the transaction? And it says,
22 "transactions listed on the BNY Mellon spreadsheet appear to
23 be" --

24 THE COURT: I'm sorry, sir. Could I ask you to slow
25 down a little bit.

JBF7SCO6

Wildner - direct

1 THE WITNESS: I apologize, your Honor.

2 A. "The transactions listed on the BNY spreadsheet appear to
3 be in accordance with the stated activity of the client, in
4 that it is a master feeder structure with payments being made
5 into other Fenero funds, a loan to a distressed company and fee
6 payments to the IM." Investment manager, that's what I believe
7 IM stands for in that context.

8 That didn't comport very well with the transaction
9 activity we had seen.

10 Q. And did you find it to be sufficiently detailed to respond
11 to the questions that had been posed by the bank?

12 A. It didn't address our -- it didn't -- it didn't remove our
13 concern.

14 Q. OK. Why don't we take that down, and I will show you
15 Government Exhibit 529 in evidence. This is an e-mail from
16 Matt Maggio to several people dated February 6. Can we go to
17 the body of the e-mail. And what does Mr. Maggio say in that
18 e-mail?

19 A. "Amanda: Thanks for forwarding this KYC. Unfortunately,
20 it is vague and doesn't adequately explain the nature of the
21 activity (over \$200 million in 4 months). Therefore, I will
22 ask John to invite the RM for DMS and the RM overseas Chinese
23 Banking Corp. Ltd. (since we did not receive KYC from it) to
24 pre-AMLOC."

25 Q. And so there Mr. Maggio is indicating that the responses

JBF7SCO6

Wildner - direct

1 were vague and did not provide an adequate explanation for the
2 transactions.

3 A. That's correct.

4 Q. Was the relationship manager invited to a later meeting?

5 A. Yes.

6 Q. And who was that?

7 A. John-Pierre Saint Victor.

8 Q. What was he directed to do at that meeting?

9 A. To go back to DMS Bank and obtain additional information.

10 Q. OK. Did he do that?

11 A. Yes.

12 Q. All right. Let me ask you to look at Exhibit 512. Does
13 this reference one of the pre-AMLOC meetings that you had
14 around that time?

15 A. Yes.

16 Q. Where this issue was discussed?

17 A. That's correct.

18 Q. And number 6 there on the agenda?

19 A. Topic six was "IR622896 - DMS Bank & Trust Ltd, Cayman
20 Islands/Fenero Equity Investments L.P./Fenero Financial
21 Switzerland L.P./Apex Fund Services UK Ltd. (JP Saint Victor)."

22 Q. Let me show you Government Exhibit 533. and this is an
23 e-mail that was sent to you regarding Fenero/DMS Bank Cayman
24 dated March 6, 2017?

25 A. That's correct.

JBF7SCO6

Wildner - direct

1 Q. If we could scroll down. Did you review the information
2 contained in this e-mail thread in connection with that March 6
3 meeting that you just described?

4 A. Yes.

5 Q. And this is directing your attention to the part of the
6 e-mail starting "Good morning JP. Is this the additional
7 information that the committee received in connection with the
8 inquiry from DMS Bank?

9 A. Correct.

10 Q. And again who provided this to the compliance committee?

11 A. I'm sorry?

12 Q. Who provided this information to the compliance committee?

13 A. Oh, John-Pierre Saint Victor.

14 Q. What happened at the March 6, 2017 meeting?

15 A. We took into account this information and made a decision
16 that we were not comfortable with processing payments for
17 Fenero.

18 Q. Was it all Fenero payments, or this particular payment at
19 the moment?

20 A. I apologize. That we weren't comfortable processing
21 payments for Fenero, but -- let me restate that -- with
22 International Marketing Services.

23 Q. And in what way was the committee's decision implemented
24 following the meeting?

25 A. We directed International Marketing Services be placed on

JBF7SCO6

Wildner - direct

1 our filter.

2 Q. And, to your knowledge, were any other entities placed on
3 the filter at that point?

4 A. There were a number of other entities placed on that filter
5 not connected with this matter.

6 Q. Do you know if OneCoin itself was added to BNY Mellon's
7 filter list at that time?

8 A. I don't recall that it was.

9 Q. You said you don't recall that it was, or you don't recall
10 if it was?

11 A. I don't recall that it was.

12 Q. And as you sit here today, do you know why it wasn't?

13 A. No.

14 Q. Let me ask you to look at Exhibit 518. And this is an
15 e-mail from Mr. Saint Victor to Nanalie Cover copying Colm
16 O'Driscoll on March 7, 2017?

17 A. Yes.

18 Q. This is a day after the meeting you were describing?

19 A. Yes.

20 Q. And can we just highlight or blow up the lower portion of
21 the body of the e-mail.

22 Now, in addition to adding an entity to the filter
23 list, was Mr. Saint Victor also instructed to discuss future
24 transactions with DMS Bank after that meeting?

25 A. Yes, he was.

JBF7SCO6

Wildner - direct

1 Q. And what was he instructed to tell the bank about future
2 transactions involving International Marketing Strategies along
3 with other entities?

4 A. That we did not want to see transactions for those entities
5 through their account on our books.

6 Q. Is that distinct from adding those entities to the filter
7 list?

8 A. Yes.

9 Q. So you said International Marketing Strategies was the only
10 entity that was actually added to the filter list, to your
11 understanding?

12 A. Service entities. Yes.

13 Q. International Marketing Services. I apologize.

14 A. Yes, International Marketing Services was added to the
15 filter; the others were not.

16 Q. So, when Mr. Saint Victor stated to the folks at DMS Bank
17 all of these names will be inserted into its filters, that was
18 not technically correct.

19 A. That is a factual statement. Yes, you are correct.

20 Q. I'm correct that he was wrong when he said all of these
21 entities were being added to its filters.

22 A. Yes.

23 Q. But the bank was being directed not to have any
24 transactions with these entities through Bank of New York
25 Mellon's accounts.

JBF7SC06

Wildner - direct

1 A. That's correct, that was the instruction to DMS Bank.

2 Q. Even though all of them were not being added to the filter
3 list.

4 A. Correct.

5 Q. And is there a reason why the filter list -- terms are
6 added sparingly to the filter list?

7 A. Yes, because the filter is not an exact match. There are
8 algorithms that run in the background that take words that may
9 sound like one word, take into account misspellings,
10 mispronunciations, John could be Sean, multiple spellings.

11 There could be a lot of false positives, so we need to be
12 cognizant of how we add things to the filter, because it could
13 cause some significant unintended consequences.

14 Q. Let me show you 534 and 535. And do these two documents
15 reflect the addition of International Marketing Services to the
16 filters at Bank of New York Mellon?

17 A. Yes, they are instructions to load them into the filter.

18 Q. And was there an attachment to 534?

19 A. Yes, there was.

20 Q. We don't have to look at it, but are you aware of a
21 spreadsheet attached to 534 that contains International
22 Marketing Services as one of the entities to be added to the
23 list?

24 A. Yes.

25 Q. And can we also look at 520. And just scrolling all the

JBF7SCO6

Wildner - direct

1 way to the right, this shows "outcome, OFAC filter, 3/16/17."

2 Does that show the filtering terms were added as a result of
3 the inquiry?

4 A. Yes, that's how we closed out the item on our tracking log.

5 Q. You indicated that -- well, withdrawn. Mr. Saint Victor in
6 Exhibit 518 -- which we can pull up again -- indicated that
7 there would be additional review, an additional review period
8 to go along with the direction not to process transactions.

9 A. That's correct.

10 Q. Was there additional review conducted to identify any
11 additional transactions with these entities after this date?

12 A. Yes, there were a number of additional reviews conducted
13 after this date.

14 Q. For about how long did that go on?

15 A. Approximately a year.

16 Q. And did BNY Mellon identify and block additional
17 transactions during that period involving International
18 Marketing Services?

19 A. We identified a number of transactions for International
20 Marketing Services that were rejected.

21 Q. And, to be clear, did any of those transactions involve
22 Fenero?

23 A. Not that I know of.

24 Q. Let me just talk about a couple of other wires involving
25 Fenero, and let me --

JBF7SC06

Wildner - direct

1 Your Honor, at this point the government would offer
2 Exhibits 720A, B and C into evidence pursuant to the
3 stipulation admitted as Government Exhibit 52.

4 THE COURT: Any objection?

5 MR. GARVIN: One moment, your Honor.

6 MR. DIMASE: These are Bank of New York Mellon bank
7 records.

8 MR. GARVIN]: No objection.

9 THE COURT: They will be received.

10 (Government Exhibits 720-A, 720-B and 720-C received
11 in evidence)

12 Q. Can we look at 720-B, and could we go to page 27.

13 Your Honor, there seems to be an issue with the PDF
14 here not containing all the pages. Since it's 2:29, perhaps we
15 could break at this point.

16 THE COURT: Yes, let's do that.

17 Ladies and gentlemen, we will break for the day.
18 Unfortunately it's Friday afternoon, so we won't see you for
19 another couple days. So have a wonderful weekend. Be safe
20 getting home. Don't discuss the case and don't read anything
21 about the case.

22 (Continued on next page)

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24
25

JBF7SC06

Wildner - direct

1 (Jury not present)

2 THE COURT: Everyone can be seated. Anything more?

3 MR. GARVIN: Your Honor, I have a housekeeping matter
4 that I'd like to bring up.

5 THE COURT: OK.

6 MR. GARVIN: I have not had a chance to discuss it
7 with counsel, but one of the witnesses for Mr. Scott is a
8 lawyer in Miami. When we heard there was a chance the
9 government was going to rest Thursday, we arranged for him to
10 come Friday. Then things slowed down a little bit and we
11 pushed him off until Monday, and now we see that we may not
12 have a situation in which the government rests on Monday. So,
13 we would like to seek permission -- if we cannot move him yet
14 again to Tuesday -- to perhaps take him out of turn. I don't
15 believe his testimony will be more than 45 minutes.

16 THE COURT: OK. Mr. DiMase, what can you tell us
17 about where the government stands in terms of when it might
18 rest.

19 MR. DIMASE: Yes, your Honor. So, I have about five
20 minutes of direct left with this witness. Obviously, I don't
21 know how long the cross will be. After that we have three
22 witnesses. We have what I expect will be a 30 to 45 minute
23 summary witness regarding the Bank of Ireland materials; a
24 witness who will testify about summary financial charts --
25 which that could be longer -- and then a relatively short

JBF7SCO6

Wildner - direct

1 witness regarding the post-arrest statement.

2 THE COURT: Regarding?

3 MR. DIMASE: The post-arrest statement, your Honor.

4 THE COURT: OK.

5 MR. DIMASE: So, I think it's possible that we
6 could -- the crosses are hard to anticipate, and I don't know
7 exactly how long the financial summary witness will be, because
8 there are a number of charts through that witness, but it is
9 possible we could finish at some point or by the end of the day
10 on Monday. It is also possible we could bleed into Tuesday.
11 But I think we will be resting either by the end of the day
12 Monday or sometime early on Tuesday.

13 THE COURT: So, I mean I'm happy to take your witness
14 out of order. So, why don't we do this: Why don't we see
15 where we are in the third leg of the day on Monday, and if it
16 looks as though you're not going to be able to finish, then we
17 will start your witness at 1 o'clock.

18 MR. GARVIN: Thank you.

19 THE COURT: OK? Anything else?

20 MR. GARVIN: Not from the defense.

21 THE COURT: All right. We will try to get you the
22 draft jury charge at some point later this afternoon, and you
23 should be prepared to discuss it at least beginning Monday
24 afternoon where we finish for the day.

25 Mr. Folly?

JBF7SC06

Wildner - direct

1 MR. FOLLY: Your Honor, we would just ask defense
2 counsel if they can let us know who their witnesses are that
3 they intend to call at this point and who the witness is that
4 we have been discussing who may testify on Monday.

5 MR. GARVIN: Miguel Diaz de la Portilla is the witness
6 we have been talking about.

7 MR. FOLLY: Are there any additional witnesses you
8 plan to call?

9 MR. GARVIN: I'm going to go through that this
10 afternoon.

11 THE COURT: OK. If there is nothing else, we will see
12 you bright and early on Monday morning. Have a great weekend.

13 (Trial adjourned to November 18, 2019 at 9 a.m.)
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22
23
24
25

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

NICHOLAS KROLL

Cross By Mr. Garvin1299
-------------------------------	-------

Redirect By Mr. Folly1357
---------------------------------	-------

Recross By Mr. Garvin1360
---------------------------------	-------

JEAN-PIERRE SAINT VICTOR

Direct By Mr. DiMase1365
--------------------------------	-------

Cross By Mr. Garvin1394
-------------------------------	-------

DAVID WILDNER

Direct By Mr. DiMase1405
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GOVERNMENT EXHIBITS

Exhibit No.	Received
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10051303
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504, 513, 517, 518 subject to connection	.1364
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519, 531, 532, 536, 536-A subject to connection	.1364
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12951375
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12961378
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5151411
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5001429
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501, 502, 504, 506, 5131429
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515, 517, 537, 534-A and 536-A1429
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720-A, 720-B and 720-C1444

DEFENDANT EXHIBITS

Exhibit No.	Received
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9011317
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9021330
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9031331
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